(1986) 02 MAD CK 0006

In the Madras High Court

Case No : Writ Petition No. 1291/86

Dugar Investments Limited and Another APPELLANT

Vs

Additional Collector of Central Excise, Madras and Another RESPONDENT

Date of Decision : 18-02-1986

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(A), 300, 300A
Customs Act, 1962 — Section 115(2)

Citation : (1986) 9 ECC 265 : (1987) 27 ELT 604

Hon'ble Judges : S. Mohan, J

Bench : Single Bench

Advocate : A. Devanathan, for the Appellant;

Judgement

S. Mohan, J.—Petition under Article 226 of the Constitution of India, praying that in the circumstances stated therein, and in the affidavit

filed therewith the High Court will be pleased to issue a writ of declaration, declaring Section 115(2) of the Customs Act read with the proviso

thereto, in so far as it relates to the adjudication order passed by the first respondent herein in his No. C. No. VIII/10/1/85 - O.R. No. 55/84-85

cus. Adj. dated 3-9-1985 in respect of the Ambassador car No. TMG 7137, owned by the first petitioner as ultra vires and as offending Articles

14, 19(1)(g) and 300A of the Constitution of India.

2. This Writ Petition coming on for orders as to admission on this day upon perusing the petition and the affidavit filed in support thereof and upon

hearing the argument of Mr. A. Devanathan, Advocate for the petitioner, the Court made the following order :-

On 13/14-10-1984 the police officers of Thiruvanmiyur and party proceeded to Injambakkam Kuppam at about 2.15 A.M. The policy party found some parsons unloading some goods from an Ambassador car parked near the sea shore. On seeing the police officers, they all fled and

disappeared. On a search of the Ambassador car TMG 7137, the Officers found 1 bundle covered with gunny bag inside the car and another

inside the dicky and one more by the side of the car. They also found 14 bundles at a distance of about 50 yards off the sea shore. They opened

the packages in the presence of independent witness and found 2228 numbers of sarees and 40 bits of blouse pieces each measuring 9.50 mtrs.

The Officers also found the marks ""GRIMSLON"" Regd. trade mark of Phiraffabrics Regd. No. 358656-A 9273R Apsara Viscos 56%, Cotton

34%, 5 mts, processed for Amardeep Group ''printed'' on some of the clothes. As there were no claimants, the reasonable belief that these goods

were brought to the sea shore and attempted to be exported out of India illicitly, the above gooda and the Ambassador Car TMG 7137 were

seized by the Officers under a mahazar for further action under the Customs Act, 1962, hereinafter referred to as the Act.

3. Thereafter, all the goods were brought alongwith the car to the office of the Central Excise, Madras-34. The same was opened and examined in

the presence of independent witnesses and Mahazar was drawn which contained the details of the inventory. The details of the inventory are not

necessary for our purpose.

4. One Jayachandran Robin Mayne, residing at No. 77, East Anna Nagar, Madras appeared before the Superintendent of Central Excise,

Headquarters Preventive Unit, Madras on 13-12-1984. He stated that he was the owner of the car TMG 7137 which he purchased on 21-6-

1984 by paying Rs. 26,000/- as his share that he had a balance of Rs. 54,000/- with Durga Investments Ltd., Mount Road, Madras. He also

stated that M/s. Durga Investment were his financiers, that he owned another car also and that he had used the car TMG 7137 for tourism

purpose. He had maintained a tourist log book which was kept in the car itself. He used to see the book once in ten days or a week. He last saw

Maran on 6-10-1984. Maran was the driver of the said car. He did not know the address of his driver. He knew that he is (the driver) from Padi.

The driver left for Madurai on 8-10-1984 and returned on 18-10-1984. On his return he found that the car was missing. He came to know of the seizure through some newspaper. He found the car TMG 7137 parked in the Excise Office on 18-10-1984. He did not have the log book of the

car TMG 7137. He did not know anything about the seized sarees and blouses. He had not seen his driver after 6-10-1984. He searched for him

but could not find him. He did not know whether his driver was licensed to drive or not. He also handed over the book and insurance papers

relating to the car.

5. A further statement was given on 31-12-1984 to the effect that he was still unable to find his driver Maran and that he did not have a copy of

the driving licence of Maran.

6. Yet another statement dated 19-3-1985 was given by him. He claimed ownership of the vehicle TMG 7137 and stated that he did not know the

address of his driver Maran and that he would bring him as soon as he could meet him. he added that he was also known as Robin Mayne, but he

was purchased the vehicle in the Jayachandran for account purposes.

7. A show cause notice dated 2-4-1985 was issued to the parties, namely (1) to Maran, the driver and (2) Robin Mayne Jayachandran, directing

to show cause as to why (i) the goods seized should not be confiscated u/s 111(d), Section 113(a) and Section 113(d) of the Customs Act, 1962,

read with Section 3(2) of the Import and Export Control Act, 1947;

(ii) a penalty should not be imposed on them u/s 114 of the Customs Act, 1962; and

(iii) the packing materials/packages used for the concealment of the goods seized should not be confiscated to the Govt. u/s 119 of the Customs

Act, 1962; and

(iv) the vehicle Ambassador car TMG 7137 used as a means of transport in the carriage of seized smuggled goods should not be confiscated to

the Govt. u/s 115(2) of the Customs Act.

A copy of the show cause notice was pasted on the notice board of the Collectorate on 6-4-1985 as required u/s 153(b) of the Customs Act,

1962.

8. Robin Mayne Jayachandran, acknowledged the receipt of the show cause notice on 12-4-1985, while the show cause notice sought to be

served on the driver was returned undelivered with an endorsement ''left''.

However, action was taken u/s 153(b) of the Act by the Customs

Authorities. No reply was received from Robin Mayne Jayachandran and Maran till 1-9-1985. It was under those circumstances, adjudication

took place before the Collector of Central Excise, Madras-34.

9. By order dated 3-9-1985, the Collector, after discussing the merits, passed the impugned order confiscating the goods, which are the subject

matter of the writ petition 1292 of 1986.

As regards the Vehicle TMG 7137, he came to the following view. So far as the Ambassador Car is concerned, the owner Jayachandran has not

been able to establish that either he or his agent namely his driver Maran had taken all necessary precautions against the car being used for carrying

the smuggled goods and the facts clearly established that the car has bee used for carrying the smuggled goods. However, being a tourist car, I

confiscate the car u/s 115(2) of the Customs Act, but give an option to the owner to redeem it on payment of a fine of Rs. 25,000/- (Rupees

twenty five thousand only) within one month from the date of receipt of this order or such extended time as the undersigned may allow an

application being made on this behalf.

It is under these circumstances W.P. No. 1291 of 1986 has been preferred for a declaration to declare Section 115(2) of the Customs Act read

with the proviso thereto is ultra vires.

10. It is the contention of Mr. A. Devanathan learned Counsel for the petitioner that this section is violative of Articles 14, 19(1)(g) and 300A of

the Constitution of India. According to him, the section imposes an unreasonable restriction on the petitioner and undue burden. The first petitioner

is carrying on business in Hire Purchase and lease transaction. The second petitioner is a shareholder of the first petitioner. In the course of his hire

purchases business, the first petitioner purchased the Ambassador car which is the subject matter of confiscation. The Invoice of M/s. Sancheti

Motors Private Limited, bearing No. 1845 dated 21-6-1984 was in the name of first petitioner. Subsequently the first petitioner let out the car on

Hire Purchase to C. Jayachandran, who had requested hire purchase financiers. He entered into hire purchase agreement with Dugar Investments

Limited on 21-6-1984. The total hire purchase was Rs. 89,200/-. The sum is payable in 36 monthly instalments. The first instalment commenced on 14-7-1984. A total sum of Rs. 25,000/- has been received.

11. During the visit to various places by the first petitioner''s development Officer, it came to light that the vehicle had been sized by the Central

Excise Department and the hirer had filed the writ petition 1647/84 and obtained interim direction. Therefore it is clear that the first petitioner is the

absolute owner of the said vehicle having invested large funds and subsequently it let out on hire to several hirers. But as per the terms of he hire

purchase agreement, the first petitioner is yet to realise a sum of Rs. 51,700/- by way of instalments, not to speak of additional charges on over

due instalments. The High purchase agreement specifically prohibits from using the vehicle for carrying contraband goods in contravention of any of

the provisions of Central Excise and Customs Act. Yet the hire purchase vehicle had been subjected to transport contraband goods. It was so

done without the knowledge of the petitioners herein. Therefore to require the petitioners to prove that they had no knowledge would constitute

under hardship and burden.

12. I have given my careful consideration to the above arguments. I do not think that they are tenable at all. In order to appreciate the contentions

of the learned Counsel for the petitioner, it is necessary for me to refer to the preamble of the law relating to customs which provided the legal

background.

13. The Customs Act of 1962 is an act to consolidate and amend the law relating to customs. The object is to see the smuggling operations are put

an end to so that the Foreign Exchange reserves would be preserved. It is with this avowed purpose under Chapter XVI that confiscation of goods

and Conveyances and imposition of penalties are provided. Section 115 specifically deals with confiscation of conveyances. After setting out in

sub-section 1 of Section 115 as to what are the conveyances liable to confiscation, sub-section (2), along with the proviso and Explanation reads

as under :

115(2) Any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be

liable to confiscation, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner

himself, his agent, if any, and the person in charge of the conveyance or animal and that each of them had taken all such precautions against such

use as are for the time being specified in the rules :

Provided that where any such conveyance is used for the carriage of goods of passengers for hire, the owner of any conveyance shall be given an

option to pay in lieu of the confiscation of the conveyance a fine not exceeding the market price of the goods are sough to be smuggled or the

smuggled goods, as the case may be.

Explanation - In this section ""market price"" means market price at the date when the goods are seized.

On an careful reading of this sub-section, it is very clear where the owner is in a position to prove that he had no knowledge or connivance,

certainly he will not be liable under this Act. Therefore it is a matter of proof. For my part I am unable to see how it is violative of Articles 14,

19(1)(g) and 300A of the Constitution of India.

14. The further argument of the petitioner is that the redemption fine that an owner is called upon to pay is relatable to the market price of the

goods. Supposing carries less valuable goods, the market price will be far less which will have no bearing as far as the price of the vehicle is

concerned. On the contrary, if he carries goods much more then the worth of the car, then the owner, for no fault of his, is called upon to pay a

huge sum by way of redemption fine.

15. This argument tends to overlook the fact that if the owner has knowledge or connivance, then undoubtedly he is to pay penalty. This liability is

a preventive measure. Therefore, a deterrent punishment is proposed by confiscation of the vehicle and a redemption fine as per the terms of the

proviso. Even here there is nothing unreasonable. As I stated above, it is entirely a matter for proof of knowledge or connivance of the owner.

Even then what is argued is that in spite of such proof, orders are not passed in favour of the owners. That will depend upon the nature of the

individual orders or the merits of the adjudication. That does not in any way impinge the validity of Section 115(2) of the Act. Therefore I dismiss

this writ petition.

