(1995) 07 AHC CK 0048

In the Allahabad High Court

Case No : Writ Petition No. 1041 of 1994

Gopal Chadha	APPELLANT
Vs	
CEGAT	RESPONDENT

Date of Decision : 14-07-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 110(2), 121, 124

Citation : (1995) 80 ELT 280

Hon'ble Judges : M.C. Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.C. Agarwal, J.—This petition under Article 226 of the Constitution of India is directed against an order dated 12-8-1994, passed by the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi whereby it dismissed an appeal by the present petitioners against the confiscation of six pieces of gold weighing 599.420 grams and of Rs. 1845/- in Indian currency.

2. I have heard the learned Counsel for the petitioners. No one appeared on behalf of the respondents although a counter affidavit had been filed.

3. The petitioner No. 1 Gopal Chadha claims to be a dealer in gold and gold ornaments. Petitioner No. 2 Ram Sumer claims to be an employee of petitioner No. 1. On 13-7-1990, the petitioner No. 2 Ram Sumer was apprehended by the officer of the Customs department at about 10.15 P.M. at Gorakhpur bus stand while he was on his way to Allahabad. On his search six pieces of gold were recovered from his langoth. He was also found to be carrying Rs. 1845/- in Indian currency. He was brought to the Customs office and again searched whereupon three slips mentioning the weight and the value of the gold were also recovered. He was examined by the officers of the Customs department and was alleged to have confessed that he purchased this gold from one Prem Sarraf of Gorakhpur and the pieces in question were the product of one gold biscuit that

the said Prem had melted in his presence. According to the petitioners, the petitioner No. 2 had not made any such statement and on his release on bail he denied having made any such statement and on the other hand contended that the gold in question belonged to his employer petitioner No. 1 who had given the same to him to be taken to a gold-smith at Gorakhpur for converting into gold ornaments. The petitioner No. 1 was also later on arrested and proceedings for confiscation commenced. By order dated 11-12-1992, the Additional Collector confiscated the gold as well as the aforesaid sum of Indian currency and also levied penalty of Rs. 10,000/- on petitioner No. 1 Gopal Chadha and Rs. 2,000/- on petitioner No. 2 Ram Sumer. The petitioners filed appeals to the Collector (Appeals) that has been dismissed. Further appeals to the Tribunal were dismissed by the impugned order dated 12-8-1994.

4. The grievance of the petitioners is that the submissions made on their behalf have not been considered by the Tribunal.

5. Learned Counsel for the petitioners contended that u/s 124 of the Customs Act an order of confiscation of the goods can be passed only after giving a notice in writing and by virtue of Section 110(2) if such notice is not given within six months of the seizure of the goods, the goods have to be returned to the person, from whose possession they were seized, According to the petitioners the goods in question were seized on 13-7-1990, while show cause notices dated 9-1-1991, were served on the petitioners on 18-1-1991, i.e., after the expiry of more than six months and, therefore, the gold in question had to be returned to the petitioners. He placed reliance on a judgment of a Division Bench of this Court in Alka Watches Pvt. Ltd. v. Union of India 1983 E.L.T. 2116 (All) in which it was held that the show cause notice as contemplated by Section 124(a) has to be served within a period of six months prescribed u/s 110(2). For this view reliance was also placed on another judgment of this Court in Prem Nath Khanna Vs. Collector of Central Excise and Others, . He referred to the impugned order of the Tribunal where this point has been disposed of by the Tribunal in about four lines observing that this contention of the learned Counsel is not acceptable in the absence of any evidence that the show cause notice which was issued by speed post on 9-1-1991, was received only on 18-1-1991. It was for the department to establish on what date the notices in question were actually delivered to the petitioners and the Tribunal seems to have placed this burden on the petitioners which was wrong. Further the department does not seem to have challenged the contention of the petitioners that the notices in question were actually delivered on 18-1-1991. In the counter affidavit filed to this petition, no other date of service of the said notices has been set up by the respondents. The right of the department to confiscate and retain the goods is subject to the conditions of Section 110(2) of the Customs Act and it was therefore, the burden of the department to prove that the provision of Section 124(a) had been complied with within the time prescribed. The Tribunals approach to this question was, therefore, misconceived. It should have determined the date of seizure as well as the date on which the notices u/s 124(a) was served on the petitioner (2) and if

the service was not within six months it should have also determined whether the mere issue of a notice without actually delivery thereof is sufficient compliance of the provision of Section 124(a).

6. Learned Counsel also contended that the cash amount of Rs. 1845/- which even according to the department was not the proceeds of sale of any smuggled goods within the meaning of Section 121, was also confiscated and the Tribunal has not dealt with this question. The Tribunal''s order is silent on the point. Learned Counsel referred to his written submissions filed before the Tribunal to show that some other points raised on behalf of the appellants have also not been dealt with in the Tribunal''s order. It is not necessary to deal with them as patently the Tribunal has not dealt with the aforesaid two questions. Whether all the points raised in the written submissions were relevant will depend upon the grounds raised in the memorandum of appeal, a copy of which has not been annexed to the writ petition. However, as the Tribunal has not properly decided the question of notices u/s 124(a) and has not decided the validity of the seizure of the cash the impugned order cannot be sustained.

7. The writ petition is, accordingly allowed with costs and setting aside the impugned order dated 12-8-1994, the matter is remitted back to the Tribunal with a direction to rehear the appeal and decide the same according to law.

