
(1970) 03 PAT CK 0004
In the Patna High Court
Case No : C.W.J.C. No. 424 of 1967

Gopi Kishan

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 31-03-1970

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Customs Act, 1962 — Section 128

Limitation Act, 1963 — Section 10, 11, 12, 13, 14, 14

Citation : (1970) 03 PAT CK 0004

Hon'ble Judges : B.D. Singh, J;A.B.N. Sinha, J

Bench : Division Bench

Advocate : Lal Narain Sinha and Padmanand Jha, for the Appellant; K.P. Verma, Government Advocate for the State, for the Respondent

Judgement

B.D. Singh, J.—The petitioner filed an application under Articles 226 & 227 of the Constitution of India and obtained a rule nisi from this Court for quashing the order dated 4.8.58 passed by the Collector, Central Excise (Annexure C), appellate order dated 22.2.66 of the Member, Central Board of Excise and Customs (Annexure F) and revisional order dated 15/17.5.67 of Secretary to the Government of India (Annexure G), and for issuance of a writ of mandamus directing the respondents to release to the petitioner 496 tolas and 6 annas of confiscated gold and gold ornaments, the particular of which the petitioner has given in his supplementary affidavit dated 13.11.69. The petitioner is the proprietor of M/S Gopi Kishan & Co. dealing in gold and silver ornaments and bullions at Purani Bazar, one of the quarters of the town of Muzaffarpur. The said firm (shop) is located in the front portion of the house of Smt. Kishuni Devi, mother-in-law of the petitioner who was living in a portion of the house at the rear. The other portion of the house is occupied by one Jasoda Lal, another goldsmith. In still another portion of the house some other tenant was occupying at the relevant time. On 18.2.58 the Superintendent of Central Excise (respondent no. 5) after obtaining a search warrant from the Sub-divisional

Magistrate (respondent no. 6) held a search of the shop of the petitioner along with some police officers, and seized 155 tolas 11 annas and 6 pies of gold and guineas, books of account and other records from his shop for which a list was also prepared. After so doing respondent no. 5 put them in the iron safe of the petitioner and after locking the same put a seal over it. On the same date he also put his seals on two other iron safes which were kept in the adjoining room belonging to his mother-in-law. As alleged by the petitioner, they contained her gold ornaments. Between 19th and 25th of February, 1958 respondent no. 5 also checked the bills, vouchers and books of account of the petitioner, which he had seized and came to the conclusion on calculation that on 18.2.58 the petitioner should have had in stock 731 tolas 7 annas and 1? pies worth of gold. On 25.2.58 respondent no. 5 opened the three iron safes, and found one of the iron safes belonging to his mother-in-law, empty, but in other two iron safes he found 1188 tolas and 7 annas worth of gold ornaments, which were again put into the petitioner's iron safe, and sealed by him. On 1.3.58 respondent no. 5 went to the shop of the petitioner again, opened his iron safe and out of 1188 tolas and 7 annas worth of gold, he released only 722 tolas 1 anna and 7? pies worth of gold and gold ornaments to the petitioner whereas after preparing a list of remaining 416 tolas 5 annas 4? pies worth of gold ornaments and guineas, he kept them in the iron safe and sealed it. On 3.3.58 respondent no. 5 took away 416 tolas 5 annas 4? pies of gold ornaments and guineas which he had kept in the iron safe and seized them in addition to 155 tolas 11 annas and 6 pies of gold and guineas which he had already seized on 18.2.58, total being 572 tolas and 10? pies. The petitioner on the same date filed an application (Annexure A) before respondent no. 5 that the ornaments of his mother-in-law Kishuni Devi should not be mixed up with those articles which were seized from the custody of the petitioner. Her ornaments, he prayed, should be separately kept and listed but it was not done. He also submitted to respondent no. 5 on the same date an abstract account (Annexure A-1) of all the articles seized. On 13.3.68 the petitioner again represented before respondent no. 5 for the delivery of the articles. It seems that the matter was referred to the Assistant Collector of Central Excise, respondent no. 4, who by letter dated 12.4.58 declined to entertain the prayer for the petitioner. On 13.3.58 the petitioner sent a letter to respondent no. 5 for providing him a copy of the search warrant but by letter dated 24.3.58 respondent no. 5 informed the petitioner that the search warrant in original was returned to the Sub-divisional Magistrate, respondent no. 6, after execution. The petitioner then applied to respondent no. 6 for the same but it was rejected (vide Annexure D).

2. On 24.4.58 the petitioner received a notice (Annexure B) from the Collector of Central Excise, respondent no. 3, mentioning therein that there was reason to believe that the gold bar and pieces, gold coins and gold ornaments specified in the notice were brought to India and converted into ornaments without any permission from the Reserve Bank of India in contravention of the provisions of Section 8(1) of the Foreign Exchange Regulation Act, 1947 (as amended) read

with Government of India's Ministry of Finance Notification No. 12(11)-F-148, dated 25-8-48 and No. 12(11)-2(36) E.F. VII/53 dated 5-2-1955 and the provisions of Section 19 of the Sea Customs Act as applicable by Section 23(a) of the said Foreign Exchange Regulation Act. Therefore, the same were liable to be confiscated. The notice also mentioned that the petitioner was liable to a penalty u/s 167(8) read with Section 19 of the Sea Customs Act and he was directed to show cause within 10 days of its receipt and to produce all evidence, documentary or otherwise, in support of his explanation as required u/s 178A of the Sea Customs Act. In response to the said notice cause was shown by the petitioner to respondent no. 3, who by his order dated 4th August, 1958 (signed on 5th August, 1958) after due consideration of the materials produced by the petitioner including his show cause, out of the total 572 tolas 10 paise of gold and ornaments seized, further released 75 tolas 10 annas 10 pies and confiscated the balance of 496 tolas 6 annas u/s 167(8) of the Sea Customs Act and further gave option to the petitioner to redeem the same on payment of a fine of Rs. 40,000/- in lieu of the said confiscation within three months from the date of the order. The petitioner did not avail the option given to him; rather aggrieved by the said order he filed an application under Article 226 of the Constitution of India before this Court which was registered as M.J.C. No. 625 of 1958. Similarly, his mother-in-law Srimati Kishuni Devi filed a separate writ application which was registered as M.J.C. No. 623 of 1958, for release of her gold ornaments which were seized. Both these applications were admitted by this Court and when they were placed for hearing, the case of Srimati Kishuni Devi was remanded to the Collector of Central Excise for fresh disposal after giving opportunity to her to establish her claim with respect to gold ornaments claimed by her, whereas the case which was filed by the petitioner was adjourned till the disposal of her case by the Collector. It seems that the Collector after the remand order and after giving opportunity to her, as directed by this Court, dismissed her appeal. Subsequently she filed a revision application before the Under Secretary to the Government of India being aggrieved by the order of the Collector, but that also was rejected. Thereafter the case of the petitioner in M.J.C. 625 of 1958 was listed for hearing on 18.2.65 before R.K. Choudhary, and G.N. Prasad, JJ. Their Lordships were not inclined to allow his application as the petitioner had not exhausted the internal remedies of appeal and revision provided under Sections 188 and 191 respectively of the Sea Customs Act. Therefore, the petitioner's counsel sought permission to withdraw the application which was allowed by order dated 18-2-65 with the above observation (vide Annexure E). Accordingly the petitioner filed an appeal before the Member, Central Board of Excise and Customs, New Delhi, respondent no. 2, who by his order dated 22.2.66 dismissed his appeal on the ground that the appeal was time barred (vide Annexure F). Aggrieved by the said order the petitioner then filed revision to the Union of India through the Secretary to the Government of India, respondent no. 1, who by order dated 15/17-5-67 (Annexure G) rejected his revision application. Hence the petitioner filed the present application before this Court.

3. Mr. Lal Narain Sinha, appearing on behalf of the petitioner, apart from challenging the orders contained under Annexures C, F and G, assailed the seizure itself made by respondent no. 5. He raised the following points for consideration by this Court:--

(i) The seizure must be on the basis of reasonable belief. It has to be justified by the department that they had reasonable belief that the gold was smuggled. Before conducting search itself they must be armed with sufficient materials on the basis of which it can be shown that the department had such reasonable belief.

(ii) The Collector of Central Excise erred in not accepting the show cause filed by the petitioner. According to him, the confiscation of the gold ornaments by his order dated 4.8.58 (Annexure C) was bad because the provisions of Section 167(8) of the Sea Customs Act or Section 8(1) of the Foreign Exchange Regulation Act, 1947 are not applicable on the facts and in the circumstances of the case. The order, according to him, is also bad in the absence of any finding that the gold was smuggled and the same was converted into ornaments by the petitioner.

(iii) The appellate authority (Member, Central Board of Excise and Customs) erred in holding by order dated 22.2.66 that the appeal was time barred.

(iv) The Secretary to Government of India acting on behalf of the Union of India erred in rejecting the revision application of the petitioner without hearing the petitioner or without giving him any opportunity to place his case. The order, according to him, is also bad because it is not a speaking order. It has not assigned any reasons.

4. I take up for consideration point no. (i) first. Mr. Sinha elaborating his point emphasised that for effecting the seizure, it was incumbent upon the seizing officer to disclose to the petitioner the materials on which it believed that the articles alleged to be decreed by the petitioner, were his smuggled goods. Even the copy of the search warrant was not handed over to the petitioner nor it was subsequently provided to him. Even the show cause notice (Annexure E) does not disclose the materials on which the reasonable belief was based. He also referred to the counter-affidavit dated 27.11.67 which was filed on behalf of the respondents. He also referred to the supplementary counter-affidavit dated 11.8.69 which was filed on behalf of the respondents which also, according to him, does not disclose any such material. It is simply stated therein that the Assistant Collector, Central Excise and the Collector of Central Excise received credible and positive information in the beginning of the third week of February, 1958 from reliable source that the petitioner was dealing in smuggled gold and silver in contravention of Sea Customs Act, 1878, and thereafter an application was made before the Sub-divisional Magistrate, Muzaffarpur for issue of such warrant u/s 172 of the said Act. Thereafter the said search was made and the goods were confiscated on reasonable belief that they were smuggled goods. It

farther stated that the information had reached from credible source. He also referred to their supplementary counter-affidavit dated 26.8.69 which was sworn by respondent no. 5 who had conducted the search in the shop of the petitioner. It is stated therein that the deponent in 1958 was posted as Superintendent of Central Excise, Muzaffarpur, whereas Shri N.D. Mukherji was Assistant Collector of the Central Excise. On 12.2.58 Shri Mukherji received a letter from a spy informing him that sufficient quantities of smuggled gold and silver came to Muzaffarpur from Pakistan and Nepal and Muzaffarpur was the biggest centre of trade in such commodities. The said letter of the spy also mentioned that the petitioner (M/S Gopi Kishan & Co.) was dealing in such gold and silver and it further gave details as to whether the smuggled gold and silver could be found in his house. On 17.2.58 on receipt of further information it was decided to raid and search the shop of the petitioner and after obtaining necessary search warrant the house of the petitioner was searched and the articles were seized. Learned counsel submitted even this is not enough. He urged that although several opportunities were given to the respondents during the course of argument they have failed to place on the record the materials on which the reasonable belief was based.

On the other hand, Mr. K.P. Verma, learned Government Advocate appearing on behalf of the respondents, contended that the various counter-affidavits referred to above particularly the one dated 26.8.69, contained sufficient materials to show that the seizing officer had reasonable belief that the petitioner was secreting smuggled gold in his shop. Besides, respondent no. 5, before effecting the search had obtained a search warrant from the Sub-divisional Magistrate respondent no. 6, as required u/s 172 of the Sea Customs Act which provides that any Magistrate may, on application by Customs Collector stating his belief that dutiable or prohibited goods are secreted at any place within the local limits of such jurisdiction of such Magistrate, issue limits of such jurisdiction of such Magistrate, issue a warrant to search for such goods. He urged that it is expected that before the Sub-divisional Magistrate issued the search warrant he was satisfied that there was reasonable ground for such belief. He submitted that if a Magistrate is inclined to hold an inquiry before exercising his power u/s 172 he has sufficient authority to make such inquiry, but if he does not feel that he should make an inquiry and is prima facie satisfied with the expression of the belief of the Customs Collector, there is nothing in the said Section which would make it obligatory upon the Magistrate to bold an inquiry on the subject.

Mr. Sinha, however, insisted that the various counter-affidavits did not contain any sufficient materials to excite a reasonable belief in the mind of the seizing officer. According to him, the satisfaction of the Magistrate while issuing the search warrant u/s 172 is not enough. The relevant provisions are to be found in Section 178-A of the Sea Customs Act which read as follows:--

(1) Where any goods to which this Section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that

they are not smuggled goods shall be on the person from whose possession the goods were seized.

He emphasised that the expression "reasonable belief" occurring in the Section is not a belief of a mob, who just catches at some slight circumstance, which creates only a sort of guess or speculation in his mind that something might exist or might not exist. According to him, the belief must be such as any other reasonable man in the circumstances of the case would entertain about the existence or non-existence of a thing. The restriction placed upon the power of the Customs Officers under the aforesaid section cannot be lightly treated as they are intended to check the exercise of the powers given to them, arbitrarily and without any foundation at all, to the harassment of the general public, Privacy is a valuable right and should not be easily brushed aside. The seizing officer must place on the record materials to establish that there were sufficient grounds for him to reasonably believe that the goods which he intended to search from the shop of the petitioner were smuggled goods and were imported into the country at the time and place when they were restricted or prohibited from being imported. His reasonable belief at the time of the seizure is condition precedent for applicability of the said section. In order to substantiate his contention he referred to the decision of the Supreme Court in (1) The Collector of Customs, Madras Vs. Nathella Sampathu Chetty and Another, wherein the constitutionality of Section 178-A of the Sea Customs Act was challenged, particularly because the burden of proof is cast on the accused. Learned counsel made particular reference to Paragraph 26 at page 329 where their Lordships while dealing with the provisions contained u/s 178-A observed:--

.....As we shall have occasion to point out later the entire evidence in the possession of the seizing officer would be and has to be before the officer adjudicating the confiscation u/s 182 of the Sea Customs Act. No doubt, on the language of Section 178-A the presumption of the goods being smuggled arises only when the seizure is made by an officer entertaining a reasonable belief that goods are smuggled, and in that sense the reasonable belief of the seizing officer is a pre-requisite for the statutory onus to arise. It is also true that at the stage of the adjudication the reasonableness of the belief of the officer effecting the seizure that the goods are smuggled would be the subject matter of investigation by the adjudicating officer. Nevertheless it is manifest that the stage of the adjudication (when only the rule of evidence laid down by the section comes into operation) the very facts which led the seizing officer to effect the seizure, as distinguished from their significance as affording a reasonable belief for the seizing officer to hold that the goods are smuggled are before the adjudicating officer. These facts which justified the seizing officer to reasonably believe that the goods were smuggled would certainly impart a rational connection between the facts on which the presumption is raised and the fact to be proved, so that whatever other constitutional infirmity might attach to the impugned provision, the lack of rational connection is not one of them....

In my opinion, the above observations of their Lordships do not lend much assistance to the contention put forward by learned counsel for the petitioner on the facts and in the circumstances of the instant case. It may be noticed that in that case, as appears from Paragraph 27 at page 330, it was argued on behalf of the petitioner while attacking the constitutionality of Section 178-A that the belief of the officer seizing goods should rest on reasonable grounds provided in the section do not afford safeguard to the citizen as the seizing officer who acts administratively entertains the belief on unproved information gathered from sources which most often are not and in practice will not be possible to be disclosed to the party affected as the seizing officer can easily say that he gathered the information from a spy. It was farther contended in that case that the reasonable belief of the officer effecting the seizure was one entirely for his subjective satisfaction and that rendered the provisions wholly illusory and therefore, patently unreasonable. Repelling the said argument their Lordships at page 330 in Paragraph 29 observed:--

It is, no doubt, true that in some cases there might be pieces of information on the basis of which the seizure was effected which might not be capable of being disclosed to the affected party because it might consist of information supplied by customs informers, but if that information would have to stand the test of scrutiny as to credibility by an independent officer dealing with it is a quasi-judicial capacity, it cannot be said that the protection is illusory. It has also to be added that at the stage of appeal or revision from the orders of the officer adjudging confiscation u/s 182 of the Act each successive appellate or revisional authority has also to address itself to this requirement.

From the above observation it is clear that whatever information the seizing officer gathered prior to the effecting of the search would stand the test of scrutiny as to the credibility by an independent officer dealing with it is a quasi-judicial capacity u/s 182 of the Sea Customs Act and it has to stand the test of further scrutiny by the appellate or revisional authority. In the instant case also the quasi-judicial authority, Collector of Central Excise, in his order contained under Annexure C, u/s 182 of the said Act, tested the credibility of the information received by the seizing officer and after considering the show cause filed by the petitioner and on scrutinising the evidence produced before him by the petitioner and by the Department, released the 75 tolas and odd of gold and gold ornaments of the petitioner and confiscated 496 tolas and odd, as mentioned earlier, u/s 167(8) of the Sea Customs Act.

It is well established that when the parties lead evidence the question of burden of proof loses its importance. Therefore, in the instant case, the petitioner cannot legitimately contend that the burden of proof as contemplated u/s 178-A of the Act was cast on the prior to the satisfaction of the Enquiring Officer that the goods were seized in the absence of reasonable belief of the seizing officer.

Further, in the instant case, the petitioner has also his right of appeal and revision provided under Sections 188 and 191 of the Act. The appellate court

once again, in the instant case would address itself to the requirement of Section 178-A of the Act.

It may be seen that in 1962 SC 316 (Supra) at pages 337-38 in Paragraph 45 it was observed that the reasonableness of the belief has to be judged by all the circumstances appearing at the time of the search. In that case the quantity of the gold in possession of Nand Gopal of the value of over one lakh of rupees was certainly very relevant factor to be taken into account and which could be considered in judging the matter. They further observed that no doubt such a quantity could be the subject of bona fide purchase in the course of normal trade particularly when the person in possession was a representative of a well known firm of bullion dealers, but one would also normally expect that the representative would have secured a bill or voucher to evidence the purchase. In other words, it was not a case of a few trinkets of gold or small quantity purchased for documents or personal use, but a considerable amount for the purpose of business. The undelivered letter addressed to M/S Mathuradass Gopalakrishnayya & Co. which admittedly had a bearing upon the purchase of gold in the possession of Nand Gopal necessarily drew an amount of suspicion on the theory of bona fide purchase. Their Lordships held that the circumstances of the case which were present at the moment when the gold was taken by the Customs Officer did tend to raise a reasonable suspicion that the gold seized had been obtained illicitly and this was sufficient to constitute, in the words of the Statute, "a reasonable belief that the goods were smuggled".

Therefore, in my opinion, the reasonableness of a belief has to be judged in the light of the facts and circumstances of each case. In the instant case also, the seizing officer could not find any explanation in the account book of the petitioner regarding the excess of gold and gold ornaments in his possession.

5. Learned counsel for the petitioner further relied on a later decision in (2) Bapalal Khushaldas Gosalia Vs. V.R. Prasad and Another, . In that case also their Lordships were dealing with the provisions contained u/s 178-A. Their Lordships while surveying all the relevant decisions of the Supreme Court including (1) The Collector of Customs, Madras Vs. Nathella Sampathu Chetty and Another, observed that before any person could be called upon to prove that the goods seized from him were not smuggled goods, the Customs Officer making the seizure must proceed upon the foundation of a reasonable belief inspired in him by some definite materials by way of some definite information or otherwise so that he could be said to have seized the goods in a reasonable belief that they were smuggled goods. It would be then for the Enquiring Officer to enquire and be satisfied as to whether the Customs Officer who had seized the goods was not wrong in his belief that the goods seized were smuggled goods, or in other words, he had a reasonable belief at the time of the seizure that the goods were smuggled goods. In case the Enquiring Officer was satisfied that the goods were seized in such a reasonable belief, he would specify the same in his show cause notice which he would thereafter issue to the person from whom the goods were

seized, and call upon him u/s 178-A of the Act to prove that the goods were not smuggled goods.

In my opinion, the facts of that case are also distinguishable from these of the instant case. In that case, as mentioned in Paragraph 6 at page 141 of the judgment, the quantity of the gold seized from the petitioner of that case was only 19 tolas and odd of the value of Rs. 2,000/- and odd. In the show cause notice itself it was stated that it was a mere suspicion that his bungalow was searched by the Customs staff. In that case neither the show cause notice nor the order of the first respondent stated that anything happened after the search was made which could lead to the seizing officer to entertain a reasonable belief that the goods recovered from the bungalow, namely the two ingots and the ornaments, were smuggled goods. Wherefore, their Lordships observed that the mere fact that a safe was found in a cellar of the house and contained currency notes and ornaments and two ingots of gold, was not by itself a circumstance which would excite a reasonable belief in the mind of the seizing officer that the gold found from the safe was a smuggled gold. The panchnama recorded on the occasion also did not indicate in any way that there was anything found or noticed at the time of the seizure which would have excited a reasonable belief in the mind of the seizing officer that the two ingots were smuggled goods. Even when the Assistant Collector wrote to the petitioner it would seem that the authorities had not yet entertained any reasonable doubt that the two ingots were smuggled goods. In that view of the matter their Lordships held that the provisions u/s 178-A were not applicable in that case. In the instant case, the show cause notice (Annexure B) clearly mentions that the authority had reason to believe. Besides, the various affidavits filed on behalf of the respondents sufficiently indicate that they had in their possession certain information which was enough to excite a reasonable belief in the mind of the seizing officer.

A reference may be made to another decision of the Supreme Court in (3) Pukhraj Vs. D.R. Kohli, . Their Lordships were also considering the provisions contained u/s 178-A and observed that when a court was dealing a question as to whether the belief in the mind of the officer who effected the seizure was reasonable or not, the court was not sitting in appeal over the decision of the said officer. All that it could consider was whether there was ground which prima facie justified the said reasonable belief. A person carrying a large quantity of gold and found traveling without ticket might well have raised a reasonable belief in the mind of the officer that the gold was smuggled. In my view that also clearly shows that the question of reasonable belief will depend upon the facts of each case. In the instant case also, as mentioned earlier, large quantities of gold and gold ornaments were found in the possession of the petitioner unsupported by vouchers or by his account books. In view of the above discussions I am unable to hold that the seizure effected by respondent no. 5 was itself bad. Thus, the contention of learned counsel for the petitioner under point no. (i) fails.

6. Now I turn to point no. (ii) which relates to the merit of the show cause

petition filed by the petitioner. The Collector of Central Excise after considering the evidence adduced by both the parties, as mentioned earlier, released a portion of the gold seized to the petitioner and confiscated the rest by order dated 4.8.58 contained under Annexure C. During the course of argument learned counsel for the petitioner, in view of the internal remedy of appeal against the said order provided u/s 188 of the Act, did not address this Court on merits of the Collector's order. Therefore, it requires no consideration by this Court under writ jurisdiction.

7. Now I advert to the consideration of point no. (iii). Learned counsel for the petitioner urged that the Member, Central Board of Excise & Customs, the appellate authority, when the appeal was presented before him against the said order of the Collector, erred in holding by order dated 22.2.66 (Annexure F) that the appeal was time barred. In my opinion, the appellate authority erred in holding that the appeal was time barred. No doubt, the old Sea Customs Act, 1878 was replaced by the Customs Act, 1962, but Section 160 of the Customs Act provides repeal and saving clause and specifically Clause 3(a) of the said Section reads as--

(3) Notwithstanding the repeal of any enactment by this Section,

(a) any notification, rule, regulation, order or notice issued or any appointment or declaration made or any licence, permission or exemption granted or any assessment made, confiscation adjudged or any duty levied or any penalty or fine imposed or any forfeiture, cancellation or discharge of any bond ordered or any other thing done or any other action taken under any repealed enactment shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provision of this Act.

It may be seen that in the instant case notice was issued and the confiscation of the goods of the petitioner was adjudged under the old Act, and the provisions for the same are not inconsistent with the Customs Act, 1962. Therefore, clearly, according to the provisions quoted above, the action taken against the petitioner shall be deemed to have been done under the old Act of 1878. In my opinion, therefore, the right of appeal of the petitioner being a substantive right shall be governed by the old Act. It is well established that the right of appeal is not a mere matter of procedure, but is a substantive right (4) (vide AIR 1957 Supreme Court 540; Garikapati Veeraya V.N. Subbish, Chaudhary and others) (5) (See also 1905 A.C. 369 (372) and (6) (1936) 1 Ch. 137 (243)). The Member, Central Board of Excise & Customs, in his order dated 22-2-66 (Annexure F), while holding that the appeal was time barred observed that the Collector's order was passed in August, 1958 whereas the appeal against the same was preferred by the petitioner on 5-3-65 long after the lapse of statutory time limit of 3 months prescribed u/s 128 of the Customs Act, 1962. The relevant portion of Section 128 reads:

(1) Any person aggrieved by any decision or order passed under this Act may,

within three months from the date of the communication to him of such decision or order--

(a) where the decision or order has been passed by a Collector of Customs, appeal to the Board;

(b) where the decision or order has been passed by an officer of Customs lower in rank than a Collector of Customs, appeal to the Appellate Collector of Customs--

Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months allow it to be presented within a further period of three months.

Indeed, the proviso to the section specially provides that the appellate authority, if satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, may allow the appeal to be presented within a farther period of three mouths. Therefore, a maximum period of six months is provided. In the view of the matter u/s 128 of the Customs Act, it is true that the appellate authority has absolutely no power to entertain the appeal beyond six months in any cause, as according to the provisions contained u/s 29(2) of the Limitation Act. Sections 4 to 24 thereof are not applicable when there are expressed provision in the Special Act. Hence neither Section 5 nor Section 14 of the Limitation Act is applicable to the Customs Act 1962. But, in the instant case, as I have observed earlier, the provisions for appeal and the limitation prescribed thereunder shall be governed by the Customs Act, 1878 which provides--

188. Appeal from subordinate to Chief Customs Authority.

Any person deeming himself aggrieved by any decision or order passed by an officer of Customs under this Act may, within three months from the date of such decision or order, appeal therefrom to the Chief Customs Authority, or in such cases as the Central Government directs, to any officer of Customs not inferior in rank to a Customs Collector and empowered in that behalf by name or by virtue of his office by the Central Government.

Such authority or officer may thereupon make such further inquiry and pass such order as he thinks fit, confirming, altering or annulling the decision or order appealed against:

Provided that no such order in appeal shall have the effect of subjecting any person to any greater confiscation, penalty or rate of duty than has been adjudged against him in the original decision or order.

Every order passed in appeal under this Section shall, subject to the power of revision conferred by Section 191, be final.

It may be observed that in the above Section although three months" period is

prescribed for filing the appeal from the date of the decision of the Collector, no provision has been made for condoning the delay as it is provided u/s 128 of the 1962 Act. Hence Section 29(2) of the Limitation Act is no bar to the applicability of Sections 4 to 24 thereof. In that view of the matter while dealing with the question of limitation as prescribed u/s 188 of the Sea Customs Act, 1878, the said provisions contained under the Limitation Act shall be applicable. Relevant portion of Section 14 of the Limitation Act provides:

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

It may be noticed that in the instant case the petitioner soon after the order of the Collector dated 4-8-58 filed writ application in this Court in M.J.C. No. 525 of 1958 which was disposed of on 18-2-65, and within three months thereof the petitioner filed an appeal before the Member, Central Board of Excise & Customs, viz. on 5-3-65. The petitioner, according to the provisions contained u/s 14 of the Limitation Act, was diligently prosecuting his case before this Court after the order of the Collector. Hence, the delay in filing the appeal by the petitioner ought to have been condoned u/s 5 of the Limitation Act; and the Member, Central Board of Excise and Customs ought to have decided the appeal on merit. In that view of the matter his order cannot be upheld. I accordingly quash the order and direct that he should dispose of the appeal on merit.

8. I now advert to the remaining point no. (iv). Since I have quashed the order of the Member, Central Board of Excise & Customs, dated 22-2-66 contained under Annexure F, which had given rise to the revision application before the Union of India, respondent no. 1, it has also got to be quashed. Besides, the impugned order is not speaking order at all. It simply mentions that the Government of India had carefully considered the points made by the applicant, but saw no justification for, interfering with the order in appeal, and the revision application was accordingly rejected. It was necessary that reasons ought to have been given for rejecting the application of the petitioner. It has been held in (7) Bharat Raja Vs. The Union of India (UOI) and Others, that the Central Board while sitting in revision must make a "speaking order." Therefore, in that view also the order of the Central Government contained under Annexure "G" cannot stand. Accordingly, I quash the order contained in Annexure "G" also. In the result, the application of the petitioner partly succeeds, the orders contained under Annexures F and G are quashed and the case is remanded to the Member, Central Board of Excise & Customs, New Delhi for disposing of the appeal filed by the petitioner expeditiously in the light of the above observations. Let a direction be issued accordingly. However, in the circumstances of the case, there will be no order as to costs.

A.B.N. Sinha, J.

I agree.