
(1973) 03 DEL CK 0016

In the Delhi High Court

Case No : Civil Writ Appeal No. 56D of 1964

Hari Chand Anand and Co.

APPELLANT

Vs

Central Board of Revenue and Others

RESPONDENT

Date of Decision : 16-03-1973

Acts Referred:

Citation : (1973) 9 DLT 338

Hon'ble Judges : B.C. Misra, J

Bench : Single Bench

Advocate : R.K. Anand and S.S. Chadha, for the Appellant;

Judgement

B.C. Misra, J.

(1) This writ petition arises out of two orders of the Additional Collector of Customs, Bombay, dated 30th January, 1962 (Annexures N-1 and N-2) by which he ordered confiscation of the goods together with a imposition of a personal penalty in respect of two consignments. By the first order she contraband goods have been confiscated absolutely and a fine of Rs. 12,500.00 in lieu of confiscation of the rest besides a personal penalty of Rs. 15.000/" has been imposed. By the second order, similar directions have been given with regard to the other consignment and concealed goods have been confiscated absolutely, while in respect of the remaining goods, a fine of Rs. 10,000.00 in lieu of confiscation and a personal penalty of Rs. 5.000.00 have been imposed. Against the said orders, the petitioners filed appeals before the Central Board of Revenue, but they were not entertained since the petitioner did not deposit the amount of penalties imposed as required by law. The order of the Central Board of Revenue has not been Bled, but reference to it is found in a letter of the petitioner dated 19th October, 1963 (Annexure "P") which will show that the Board had sent the communication on 25th January, 1963. On being further pressed to consider the appeals without the deposit of penalty, the Board still refused the request. Eventually coercive measures weie adopted against the petitioner for recovery of the amount of the penalties by the Assistant Collector

(Recoveries) in Delhi some- time in November, 1963 This has led to the filing of the present petition by the petitioner on 25th January, 1964.

(2) The facts stated in the petition are that the petitioner was a holder of an import license and that license valid up to 30th April, 1967, had been granted to him for importing Rs. 13500.00 worth of component parts of industrial sewing machines and Rs.7,600.00 worth of component parts of ZigZag industrial embroidery machines making a total of Rs. 21,100.00. The petitioner had 15 days more to ship the goods. In order to import the requisite goods, the petitioner placed an order with a shipper in Tokyo in Japan for importing 225 sets of components of industrial sewing machines and 38 sets of component parts of Zig Zag machines. According to the petitioner, he placed the order on 17th April, 1960 in response to the quotations of the shipper dated 17th April, 1960 and he opened the letter of credit later in favor of the shipper. The goods were shipped from Japan on 10th May, 1960 within the period allowed by the license. The petitioner submits that in May, 1960, he had accepted the draft in respect of the goods and that the Letter of credit had latter been cleared at the insistence of the Bank. The goods were, however, sought to be cleared through the clearing agent and a bill of entry was presented to the customs authorities at Bombay who examined the goods on 19th August, 1960 and found that besides the invoiced contents, a number of undeclared items had been cleverly concealed under a false bottom of loosely nailed wooden slates and systematically packed "and above them, the declared goods had been methodically packed to give an impression that only the invoiced goods had been packed in the cases. The petitioner contends that he had not received the invoices when the goods landed, and that he had received the duplicates only on 12th August, 1960 which contained the undeclared goods, but the goods had been submitted for clearance before the said date on the basis of the previous invoices (which did not contain the undeclared goods) but which the petitioner alleges not to have received. The case of the petitioner is that he had no knowledge or hand in the dispatch of the undeclared goods and that he came to know about them only on receipt of the duplicate invoices. Eventually the customs authorities gave a show cause notice to the petitioner and after hearing him and examining the material placed before them, held that the bonafides of the transaction had not been established and the weight of evidence proved beyond a reasonable doubt that the contraband goods could not have been packed in cases without the knowledge and connivance of the importers and that they had a motive and it was a pre-conceived and calculated attempt with the connivance of the importers and that they had a motive and it was a pre-conceived and calculated attempt with the connivance of the suppliers in importing excess sewing machine parts not covered by the license in order to avoid duty. They also found that even the value of the declared goods exceeded the one given in the license. Consequently the Additional Collector of Customs passed the order of confiscation and imposition of penalty mentioned above

(3) The petitioner has inter alias reiterated in the writ petition that he had no

band or knowledge in the import of the undeclared goods and that they had been dispatched erroneously by the shipper and that the guilt of the petitioner had not been brought home to him. and he has been punished by wrongly placing on him the onus of proof.

(4) The petition has been contested on behalf of the respondents and a counter-affidavit of Mr. T.S.Swaminathan, Under Secretary of the Ministry of Finance dated 17th December, 1966 has been filed. It has been reiterated that the burden had not been wrongly placed and that the finding of the Collector- about the import of the items by the petitioner in contravention of law was legal and valid.

(5) Mr. R. K. Anand, Advocate, has raised the following contentions in support of the writ petition, namely, (i) the Additional Collector of Customs had wrongly placed the onus of proof on the petitioner while the burden of proving that the goods were contraband or that the petitioner had illegally imported them rested on the department; (2) on the record it has not been established that the petitioner was the person concerned in the import of the contraband goods and had committed the offence mentioned in clause (8) of section 167 of the Sea Customs Act and the imposition of the penalty was illegal in the absence of determination of the real value of the goods u/s 30 of the Act ; (3) the offence with which the petitioner has been charged was only contravention of the terms and conditions of the license and not of any law and the impugned order in finding the petitioner guilty and confiscating the goods and imposing the penalty is erroneous on its basis; (4) the impugned order contravenes the principles of natural justice as the authorities had collected evidence behind the back of the petitioner and had used the same to his disadvantage and (5) the Central Board of Revenue erred in law in not entertaining the appeal of the petitioner without payment of the penalty.

(6) Mr. Anand has in support of his first contention cited a number of authorities, namely *Sewpujan Rai Indrasanrai Limited v. Collector of Customs and others*, *AmbaLal v. Union of India*, *Kartar Singh v. Union of India*, *Kanunga and Company v. Collector of Customs and others*, *Manicklal Sen v. Additional Collector of Customs and another*, *A. G Roy v Union of India and other*, *Public Prosecutor, Madras v. The M. L Modi*, *Sanwarmal Purohit and another v. The Collector of Central Excise and Land Customs and Amulya Chundra v. Collector Central Excise*. It is however, not necessary to refer in detail to all of them. In *AmbaLal's* case (*supra*), the Supreme Court observed that although the provisions of the Code of Criminal Procedure or the Evidence Act may not apply in terms, the principles of criminal jurisprudence and of natural Justice must necessarily apply and so the burden of proof is on the customs authorities and they have to bring home to the person alleged to have committed a particular offence under the said Acts by adducing satisfactory evidence. The Court further considered the application of section 106 of the Evidence Act and held that the onus to prove the case against the accused rested on the customs authorities and where they failed to discharge

the same, the order of confiscation was bad. Then is in my opinion,scarsely any dispute with regard to the principle of law laid down by the Supreme Court in the said case and followed by the various High Coures in the country. The difficulty, however, in the instant case lies in the application of the rule to the facts of the present case. With the assistance of the learned counsel, I have carefully read the impugned orders of the Additional Collector. I do not find that the AdJuional Collecure has at any stage placed the onus of proof on the petitioner or has arrived at his conclusions merely on the failure of the petitioner to discharge the said burden. The impugned order, as observed, holds that the petitioner had obtained a license for import of component parts of industrial sewing machines and component parts of the Zig-Zag industrial embroidery machines, hat the consignments booked contained a few sets of industrial machines and in addition of domestic sewing machines, which were "not -covered by the license, and undeclared goods had been Systematically packed and Cleverly concealed under a false bottom of loosely made nailed wooden states. The declared goods were methodically packed above the false bottom so as to give the impression that only the invoiced goods were packed in the cases; the undeclared goods were found in the cases And formed the last layer surreptitiously concealed under the said false bottom and these features suggested that the excess goods were being smuggled in the country. This is very relevant material to support the finding of the Collector.

(7) There is no doubt that the petitioner was the importer of the said consignments and they had been presented to the customs authorities for clearance on his behalf. It was not the case of the petitioner that the declared goods had not been imported by him purporting to be in pu suance of the license. His contention was that the exporter had of his own/without his instructions, mixed up the two goods and exported the contraband goods without his consent or knowledge in the said consignments. This is the defense raised by the petitioner before the customs authorities and the petitioner railed on certain letters, mainly the letter dated 4th August 1960. The Additional Collector found the said letter to be fabricated "and he rejected the Explanation of the petitioner and found his defense to be false. It was also urged before him that the petitioner had no motive in importing the contraband goods. This contention was negated by the Additional Collector and he found that the said goods had been imported according to aprecoaceived calculated attempt with the connivance of the suppliers with a view to save duty and obtain an unfair advantage. In my opinion, the circumstances of the case in which the goods had landed and were offered for clearance as well as the conduct of the petitioner were sufficient circumstances to enable the customs authorities to arrive at the conclusion they did. Added to it, there is a rule of criminal jurisprudence that if an accused person offers an Explanation which in found to be palpably false, this will point to the gutlt of the accused and coupled with other circumstances of the case, may result in his conviction. See Deonandan Mishra v. The State of Bihar,

(8) An authority dealing with a case u/s 167(8) of the Sea Customs Act was

pronounced by the Supreme Court in *Issardas Daulat Ram v. Union of India and others*". This was a case of confiscation of smuggled gold and it was not covered by the presumption drawn u/s 178A of the Sea Customs Act, since the seizure and adjudication proceedings had taken place anterior to the enactment of that section, The question that fell for determination turned on section 167(8) of the Sea Customs Act. The Collector found that the gold which was subject of adjudication was of foreign origin and that it had been imported in contravention of the law. The argument advanced before the Court was that there was no direct evidence that the gold had come into the Country after the two notifications banning its import and as such it could not be deduced or inferred otherwise. The Court observed that in finding about the gold being smuggled, the Collector had referred to the conduct of appellants in connection with the credibility of the story about the purchase of the gold from three parties, (b) the price at which the gold was stated to have been purchased which was less than the market price and (c) the hurry exhibited in trying to get the gold melted at the refinery with a small bit of silver added so as to reduce the fineness of the gold and thus approximate the resultant produce to licit gold found in the market. The Court held that these were undoubtedly relevant pieces of evidence which bore on the question of the character of the gold which was licit or illicit and the finding was not vitiated on account of lack of direct evidence or absence of any material before the Court to justify the finding.

(9) As result, the contention that the case of the petitioner had been decided against him merely on the burden of proof and in the absence of any evidence or material before the Collector is not tenable and is rejected. The first contention of the petitioner, Therefore, fails.

(10) In support of the second contention, Mr. Anand has urged that it had not been established that the petitioner was the person concerned in the import of contraband goods. Section 167(8) of the Sea Customs Act reads as follows- 167. Punishment for offences :-The offences mentioned in the first column of the following schedule" shall be punishable to the extent mentioned in the third column of the same with reference to such offences respectively :- Offences. Section of this Act to which offence has reference 8. If any goods, the importation or exportation of which is prohibited or restricted by or under such offence shall be liable to a penalty not exceeding three times the value of the goods, prohibition or restriction ; or or not exceeding one if any attempt be made so to thousand rupees. importer or exporter of any such goods; or if any such goods be found in any package produced to any officer, of Customs as containing no such goods ; or if any such goods, or any dutiable goods, be found either before or after landing or shipment to have been concealed in any manner on board of any vessel .within the limits of any port in India ; or if any goods, the exportation of which is prohibited or restricted as aforesaid, be brought to any wharf in order to be put on board of any vessel for

ex. portation contrary.to such prohibition or restriction."

(11) The expression "concerned" was interpreted by K.N. Wanchoo, J. speaking for the Court in Assistant Collector of Customs, v. Sita Ram as meaning interested in, involved in, mixed up with, and it was observed that where a person enters into some kind of transaction or attempts to enter same kind of transaction with respect to prohibited goods and it is clear that the act is done with some kind of prior arrangement and agreement, it must be held that such a person is concerned in dealing with prohibited goods and that the fact that the act is stopped at an attempt to purchase when the police intervened does not in any way mean that the accused was not concerned in dealing with smuggled gold. The learned counsel for the petitioner has cited Rodha Kishan Bhatia v. The Union of India and others", to support the proposition that a mere finding of fact that the person was in possession of smuggled goods would neither imply that the Collector had considered the question of the person's being concerned in the commission of the offence of illegal importation of the goods, nor in any way justified the conclusion that he must have been so concerned and that other circumstances indicating that the person had some connection with the importation of the goods prior to their actual import had to be established Mr. Anand has, however, failed to notice that in this authority itself, the Court in paragraph 12 observed as follows: -

"WE may also mention here that there is no allegations that the appellant himself smuggled the gold from outside the country." This observation shows that where the party is charged with importation of the contraband gold himself and is found guilty, he is undoubtedly the person concerned and, Therefore, the considerations which may prevail in the case of those persons who take part in the transaction either prior or subsequent to importation, do not arise for discussion. As mentioned above, there is no doubt that it is the petitioner who had opened a letter of credit and imported the consignment and cleared the consignment and tendered it for clearance before the customs authorities. There can be hardly any dispute with regard to the petitioner being an importer of the goods and, Therefore, being the person concerned in the importation. The defense set up by the petitioner is that he was not the importer since the shipper had dispatched the contraband goods mixed up with the ordered goods without the instructions of the petitioner. In support of his defense, he had relied upon certain documents which the Collector found to be fabricated. It is, Therefore, not open to the petitioner to say that the Collector must have before him some direct evidence of the petitioner ordering the shipper to send the contraband goods. To expect such evidence is to ask for moon-shine since this must be within the personal knowledge of the party and is normally not likely to see the light of the day. The facts and circumstances of the case clearly establish that the petitioner was the owner of the goods and had imported them and it does not lie in his mouth to say that he is not the person concerned. The contention of the counsel is not tenable and is rejected. The imposition of the penalty does not call for determination of the real value u/s 30 and the grievance of the petitioner is

misconceived.

(12) The counsel next contends that the offence charged constituted only breach of the terms and conditions of the license within the rule of law laid down by the Supreme Court in *East India Commercial Company Limited v. Collector of Customs*". The offence charged is not at all a breach of the terms and conditions of the license. The license did not permit the petitioner to import the contraband goods in question and he has imported them illegally in contravention of the law and not in the terms and conditions of the license held by him. There is no term and condition of the license that the petitioner would not import any goods not permitted by the license. This provision is contained in section 3 of the Import and Export Control Act, 1947 and the statutory order promulgated under it. The terms and conditions of the license only deal with the goods which are covered by the license and are imported accordingly, The contention, Therefore fails.

(13) The learned counsel for the petitioner has strongly argued that the impugned order contravenes the principles of natural justice. There is, however, no substance in the contention. There is no material placed before the Court that the customs authorities had behind the back of the petitioner collected any evidence and used it to his disadvantage without bringing it to his notice. The material relied upon by the Collector was all within the knowledge of the petitioner and had been placed before him for being met. As a matter of fact, he appeared before the Collector through counsel on a number of occasions and he never made a grievance of the fact that he wanted to produce or cross-examine any witness and had not been allowed to do so. It appears that the petitioner is only having conjectures in his mind in throwing this challenge against the impugned order and he has failed. The last contention of the petitioner is groundless. The appeals were filed u/s 188 of the Sea Customs Act, 1878. Section 189 of the Act provides that in appeals relating to duty or penalty, the owner of the goods, if desirous of appealing against such decisions of order shall, pending the appeal, deposit the amount demanded. It was, Therefore, the duty of the petitioner to pay the amount of duty and penalty before his appeals could be heard. Failure of the Board to consider the appeals, without deposit of the amount in compliance with the provisions of law, does not suffer from any infirmity. The petitioner requested the Board to revise the order in exercise of its powers u/s 190A of the Act in respect of the appeals filed by him. This was evidently refused and rightly so. The petitioner could not be allowed to bypass the requirements of section 189 of the Act in respect of the appeals by resort to invoking the revisional powers of the authorities. Moreover, the exercise of revisional power u/s 190A would rest within discretion of the authorities concerned and no interference with its orders or actions is called for.

(14) As noticed before, the petitioner had not filed a copy of the order of the Central Board of Revenue dated 25th January, 1963 along with the writ petition. After the arguments had been heard on 16th February, 1973 and the case was adjourned to 19th February, 1973 as part-heard, the petitioner has filed an

application (C.M. 730 of 1973) placing on record a copy of the order of the Central Board of Revenue refusing to consider the appeal owing .to non-compliance of section 189 of the Act, requiring the deposit of the penalties. There is no ground to allow the application at this late stage of the petition when the searing has almost concluded. Even otherwise, its filing does not make any difference to the decision of the writ petition. The application, is Therefore, rejected.

(15) As a result, the writ petition fails and is dismissed, but in the circumstances of the case, the parties will bear there respective costs.