(1961) 08 GAU CK 0004

In the Gauhati High Court

Hiralal Sarawgi APPELLANT

Vs

Collector of Central Excise and Land Customs and Another RESPONDENT

Date of Decision : 08-08-1961

Acts Referred:
Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 106, 108

Citation : AIR 1962 Guw 39 : (1962) CriLJ 269

Hon'ble Judges : G. Mehrotra, C.J;S.K. Dutta, J

Bench : Division Bench

Judgement

G. Mehrota, C.J.—This rule was issued on an application under Article 226 of the Constitution. The petitioner Hiralal Sarawei (Jain) is a businessman of Gauhati and is the owner of the firm named and styled as "Messrs. Prpmsukh Hiralal" situated at Fancy Bazar, Gauhati which will hereinafter be referred to as "the shop of the petitioner". On the 8th January 1959 the Deputy Superintendent (Preventive) of Central Excise and Land Customs at Gauhati searched the shop of the petitioner, on a search warrant received from the Sub-divisional Magistrate at Gauhati. In the course of the search which was conducted in the absence of the petitioner but In the presence of his employee Sri Dungarmall Jain, a number of articles were seized. We are not concerned with the complaint made by the petitioner in his petition as regards the manner of the search, A number of properties were seized. Thereafter notice was issued to the petitioner to show cause as to why action should not be taken u/s 167(8) of the Sea Customs Act against the petitioner, In response to the notice issued by the Department the petitioner filed an objection. His contention was that these items were purchased by him from various persons on different dates.

The inquiry was held, personal hearing was given to the petitioner and the material evidence was taken by the departmental officer. Thereafter by his order dated the 20th October 1959 the Assistant Collector of Central Excise and Land Customs, Gauhati directed that out of thirty-four items of the properties seized, a number of the properties should be confiscated. He further directed the petitioner to get them redeemed on payment of duty and imposed a personal penalty of Rs. 100/- u/s 167(8) of the Sea Customs Act. The petitioner went up in appeal against the aforesaid order to the Collector of Central Excise and Land Customs, Assam, Manipur and Tripura at Shillong, who by his order dated the 3lst December 1960 allowed the petitioner''s appeal in respect of certain items of properties. In respect however of certain items namely, "Hindoo No. 1 ''Nibs''," 7 O'' clock blades marked D-1, torch light No. 335, torch light Wingston brand No. 7019. seal spot light torch No. 366, lion flash light No. 4445, latez 3 cell spot light. Bear brand spotlight, sky master torch light (express), lion torch light No. 777, H.K. mark torchlight and Midiane cigarette papers, he rejected the appeal and directed that these items should be confiscated. He further maintained the Order with regard to the penalty. It is against this order that the present petition has been filed.

2. The point taken by the petitioner is that the burden has been cast by the department wrongly upon the petitioner. Although u/s 167(8) of the Sea Customs Act a special jurisdiction is conferred on the authorities to confiscate certain goods which have been imported in contravention of the order of prohibition issued by the Central Government either u/s 19 of the Sea Customs Act or under the Imports and Exports (Control) Act, 1947, still the Petitioner is tried of an offence and the rule of criminal jurisprudence that the burden is on the prosecution applies with equal force to the proceedings under the Sea Custom''s Act. His contention is that the petitioner has claimed that he had purchased these goods in various years from 1951 to 1955.

The authorities have only negatived the contention of the petitioner that he had purchased these goods in the years mentioned by him. Having rejected the plea of the petitioner of bona fide purchase, they have inferred that the goods India in contravention of the restrictions imposed were of illicit origin and they were imported in under the provisions of the Sea Customs Act. The contention is that the burden being on the department, it is not enough for the department to hold that as the petitioner has failed to prove the bona fide purchase of the goods, it necessarily follows that the goods were imported into India in contravention of the provisions of the Imports and Exports (Control) Act 1947.

3. The contention of the department with regard to the 7 O'' clock blades is that these were manufactured after the absolute restriction was imposed. There is no evidence on the record from which it could be shown that the blade was manufactured after the period when the absolute restriction was imposed in the year 1957. In the absence of any evidence to that effect on the record it cannot be said that the department has discharged even the burden on it that the goods were imported into India in contravention of the orders issued under the Imports and Exports (Control) Act, 1947.

4. Section 167(8) of the Sea Customs Act provides that-

If any goods, the importation or exportation of which is for the time being prohibited or restricted by or under Chapter IV of this Act, be imported or exported from India contrary to such prohibition or restriction, such goods shall be liable to confiscation and any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods, or not exceeding one thousand rupees.

Section 19 of the Sea Customs Act is under Chanter IV of this Act and it says-

The Central Government may from time to time, by notification in the Official Gazette, prohibit or restrict the bringing or taking by sea or by land good, of any specified description into or out of India across any customs frontier as defined by the Central Government.

Section 3 of the Imports and Exports (Control Act 1947 lays down as follows:

3(1) The Government may, by order publish in the official Gazette, make provision for prohibiting, restricting or otherwise controlling In all cases, or in specified classes of cases, and subject to such exceptions, if any, as may be made by or under the order:

(a) the import, export carriage coastwise or shipment as ship''s stores of goods of any specified description;

(b) the bringing into any port or place In India of goods of any specified description intended to be taken out of India without being removed from the ship or conveyance in which they are being carried.

(2) All goods to which any order under Sub-section (1) applies shall be deemed to be goods of which the import or export has been prohibited or restricted u/s 19 of the Sea Customs Act 1878 VIII of 1878, and all the provisions of that Act shall have effect accordingly, except that Section 183 thereof shall have effect as if for the word ''shall'' therein the word ''may'' were substituted.

(3) Notwithstanding anything contained in the aforesaid Act. die Central Government may, by order published in the Official Gazette, prohibit, restrict or impose conditions on the clearance, whether for home consumption or for shipment abroad, of any goods or class of goods imported into States of India.

In pursuance of the powers conferred u/s 3 from time to time orders were issued by the appropriate Government. On the 7th December 1955 an order was issued by the Government of India by which the import of certain articles including the articles in question is said to have been restricted. The nature of the restriction was also varied from time to time. For some period the restriction was in absolute terms. During some time the restriction was partial inasmuch as the goods could be imported after obtaining the license. The department therefore in our opinion by merely: holding that the petitioner has failed to prove the bona fide purchase of the goods has not discharged the burden on it to the effect that these goods were imported in contravention of the restrictions imposed under the provision of the Imports and Exports (Control) Act 1947. No evidence has been led by the department to show that these goods were imported during the period when the imposed restrictions were in force.

5. The appellate authority has disposed of the whole matter in a very summary way, taking each item separately. The appellate authority has remarked that no details have been furnished item-wise in the receipts produced by the party to show that the "Hindoo No. 1 ''Nibs''" were sold under that receipts and that accordingly his contention that the nibs were covered by the receipts produced by. him cannot be accepted. As we have already pointed out, merely because the petitioner failed to prove the bona fide purchase it does not follow that the goods were necessarily imported in contravention of the order passed under the Imports and Exports (Control) Act 1947. As regards the 7 O'' clock blades he has only observed that the 7''0 clock blades bear marks D-1 and hence, appellant''s contention cannot be accepted. There is no reference to any evidence to show that these blades were manufacture after the imposition of the restriction.

Some explanation has been offered in the counter-affidavit filed before us, but there is no evidence on the record to prove that these blades were manufactured after the imposition of the restriction. As regards the torch lights the appellate authority has also observed that-

The torch lights were Originally claimed to be rusted, out-modelled and old. The receipts produced show that these were purchased recently. Examination of the torch lights show that all of them except two are serviceable arid in good condition. Appellant''s contention cannot therefore be accepted". No inference can be drawn from these observations. What the authority means to suggest is that as these lights were manufactured recently, they must have been imported after the imposition of the restriction and in contravention of the restriction order. In our "opinion no such inference can be drawn from the mere appearance of these torch lights an it cannot be said that the department has discharged the burden placed on it. As regards the Midiane cigarette papers a similar error has been committed by the departmental authority.

6. Reference in this connection may be made to the case of Amba Lal v Union of India reported in AIR 1961 SC 264. Dealing with the question of the burden of proof it was observed by their Lordships of the Supreme Court at page 260 as follows:

There is no evidence adduced by the customs authorities to establish the offence of the appellant, namely, that the goods were smuggled into India after the raising of the customs barrier against Pakistan in March 1948. So too, on the part of the appellant, except his statement made at the time of seizure of the goods and also at the time of. the inquiry that he brought them with hint into India in 1947, no other acceptable evidence has been adduced. In these circumstances, the question of onus of proof becomes very important and the decision turns upon the question on whom the burden of proof lies.

This Court has held that a customs officer is not a judicial tribunal and that a proceeding before him is not a prosecution. But it cannot be denied that the relevant provisions of the Sea Customs Act and the Land Customs Act are penal in character. The appropriate customs authority is empowered to make an inquiry in respect of an offence alleged to have been committed by a per son under the said Acts summon and examine witnesses, decide whether an offence is committed, make an order of confiscation of the goods in respect of which the offence is committed and impose penalty on the person concerned******. To such a situation, though the provisions of the Code of Criminal Procedure or the Evidence Act may not apply except in so far as they are statutorily made applicable, the fundamental principles of criminal jurisprudence and of natural justice must necessarily apply. If so, the burden of proof is on the customs authorities and they have to bring home the guilt to the person alleged to have committed a particular offence under the said Acts by adducing satisfactory evidence.

Dealing with the applicability of Section 108 of the Evidence Act it has been further remarked by their Lordships of the Supreme Court at page 267 as follows:

We cannot also accept the contention that by reason of the provisions of Section 106 of the Evidence Act the onus lies on the appellant to Prove that he brought the said items of goods into India in 1947. Section 108 of the Evidence Act in terms does not apply to a proceeding under the said Acts. But it may be assumed that the principle up deriving the said section is of universal application. Under that section when any fact is especially within the knowledge of any person the burden of proving that fact is upon him. This Court in Shambu Nath Mehra Vs. The State of Ajmer, after considering the earlier Privy Council decisions on the interpretation of Section 106 of the Evidence Act, observed at p. 204 (of SCR) : (at p. 406 of AIR) thus:

The section cannot be used to undermine the well established rule of law that save in a very exceptional class of case, the burden is on the prosecution and never shifts.

Applying the same principles enunciated in this case we think that in the present case the department failed to discharge the burden upon it. In the result we quash the order of the Collector of Central Excise and Land Customs and direct that the properties confiscated should be released forthwith and the penalty and the incidental charges if paid should be refunded. The petition is allowed with cost which is assessed at Rs. 100/-.

S.K. Dutta J.

7. I agree.