(1991) 11 DEL CK 0001

In the Delhi High Court

Case No : Civil Appeal No. 1399 of 1991

Jasvir Kaur APPELLANT

Vs

Union of India and Another RESPONDENT

Date of Decision : 25-11-1991

Acts Referred:

Tourist Baggage Rules, 1978 — Rule 3

Citation : AIR 1992 Delhi 332 : (2009) 241 ELT 521

Hon'ble Judges : B.N. Kirpal, J;Arun Kumar, J

Bench : Division Bench

Advocate : K.G. Seth, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) The petitioner is seeking to challenge the decision of the Customs. authorities as well as the Joint Secretary to the Government of India whereby two Gold Karas weighing 110 grams, valued at Rs. 20,900.00 were not allowed to be re-exported.

(2) Briefly stated the facts are that the petitioner arrived at I G.I. Airport from abroid and was carrying on her person Gold in the from of two crude Karas. She did not declare these Karas and, according to the impugned orders, she tried to go through the Green Channel and when she was intercepted at the exit gate as to whether she was carrying any Gold, she answered in the negative. Apparently the Customs authorities did recover the two Gold Karas and the same were confiscated and a penally of Rs. 1500.00 was imposed.

(3) An appeal was filed and it was contended that the impugned orders were contrary to the Tourist Baggage Rules. The submission was that the Karas should be allowed to be re-exported and penalty refunded. It was held by the Appellate Authority that the two Gold articles were examined by him and be had found that the same were not normal Karas but were strips of Gold whose ends had been joined. The purity was found to be of 23 carat and they were made in a very

crude manner without any design, polishing or finishing. The Appellate Authority did not consider articles to be regarded as jewellery. In revision, the Government of India upheld the order of the Appellate Authority and did not order the re-export.

(4) Before us it is contended that personal jewellery is one of the items which can be brought into India by a tourist. This Is regarded as a temporary import and Rule 3 of the Tourist Baggage Rules, 1978 permits a number of items of value being brought by the tourist for personal use including personal jewellery. These items have then to be taken out of the country by the tourist when be goes back.

(5) Learned counsel for the petitioner has relied upon Rule 7 and contended that sub-rule 2 of Rule 7 requires a list to be given to the passenger on his arrival which has to be filled indicating the articles which are being import- ed. It is submitted that no list was given to the petitioner and in any case the articles being personal jewellery, the same should have been ordered to be re-exported.

(6) The said Rule 7 reads as follows :

"7.Undertaking to be given to customs authorities in certain cases. 1. Notwithstanding the provisions of sub-rule (1) of Rule 3, articles of high value such as sound recording apparatus, wireless receiving sets, and the like shall not be allowed to be imported free of duty unless the tourist gives an undertaking in writing to the proper office to re-export them out of India on his leaving India for a foreign destination or on his failure to re-export to pay the duty livable thereon. 2. Every tourist shall be given on arrival and after examination of his baggage, a list of articles of high value brought by him signed by the proper officer who examines his baggage. If no such article of high value is imported, a nil list, similarly signed, shall be given. Unless the list is produced by the tourist to the proper officer at the time of examination of his baggage on his departure from India for a foreign destination Along with the articles, if any, listed therein, his baggage may not be allowed clearance through the Customs for export".

(7) It is the tourist who knows as to whether the has brought with him any article of high value. As we read Rule 7 it appears to us that it is incumbent on the tourist who comes into this country bringing with him articles of high value which are intended to be re-exported by him when he goes oat of the country, to make a declaration and give the undertaking as contemplated by Rule 7. For the sake of convenience the Customs authorities may distribute a list to the passenger who lands at the airport but even if, without demand, no such list is given to a passenger but the passenger has brought an article of high value, then it is for him to give an undertaking as contemplated by sub-rule (1) of Rule 7. It is for him to ask for the form in which an undertaking is to be given. Sub-rule (2) has to be read Along with sub-rule (1) and the said sub-rule requires a list of articles of high value to be given by the tourist. If, for any reason, the Customs authorities on their own do not give a list to be filled by a tourist that does not

absolves the tourist of his obligation to obtain a list and list the articles of high value which have been brought by him.

(8) In the present case admittedly this was not done. It is only if such a list which is filled is signed can the articles be cleared for export when the tourist leaves India.

(9) In the present case the facts found by the Customs authorities show that there was a deliberate attempt by the petitioner not to furnish any information with regard to the two Gold articles which she had brought. She was specifically asked whether she had brought any Gold and her answer was in the negative. It is only after the Gold articles were actually recovered from her that she bad sought permission to re-export them from India.

(10) We have no manner of doubt that re-export cannot be asked for as of right. If the Customs authorities have come to the conclusion, as they did in the present case, that the intention of bringing an article of high value is to dispose it of in India or is in an attempt to smuggle the same into India then the question of re-export cannot arise when that article is recovered from the passenger. The passenger cannot be given a chance to try his luck and smuggle Gold into the country and if caught he should be given permission to re-export. That is not the intention of Rule 3 or Rule 7 of the Tourist Baggage Rules. It is the genuine personal jewellery which alone is permitted to be brought into the country which must be re-exported. Whenever the Customs authorities find that in the garb of personal items goods are sought to be smuggled or brought into the country without the authority of law then there is every right with the Government to confiscate the same. For good and valid reason re-export may be allowed but it cannot be claimed as of right.

(11) Learned counsel for the petitioner has drawn our attention to the decision of a Division Bench of this Court C.W. 3645/90 decided on 8th October, 1991 (Smt. Ram Singhani Chandra v. Union of India & Ors) In this case 4 Gold Bangles were brought and the Court followed the order of the Collector of Customs (Appeals) dated 25th October, 1990 in the case of one Arwender Singh. In Arwender Singh''s case the wife of the appellant was wearing bangles which were confiscated. It was held by the Collector of Customs (Appeals) that the appellant''s wife had been stopped at the exit gate of the Red Channel. Keeping in view that the bangles were being worn by the wife of the appellant therein and that be was an Afghan national and was going through the Red Channel, the Collector (Appeals) in that case allowed there-export of the bangles. In Smt.Ram Singhani Chandra''s case (supra), decided by this Court, full facts have not been indicated in the order and there is no reference made in this order either to Rule 3 or Rule 7 of the Tourist Baggage Rules. The same can be of little assistance to the petitioner.

(12) It is contended by the learned counsel that the petitioner is a British citizen and, Therefore, Arwender Singh''s case applies. It is also stated that half of the

jewellery which she had brought bad been entered in the passport for re-export. In our opinion the very fact that half of the jewellery which the petitioner had brought by air had been entered in the passport shows the application of mind of the Customs authorities to the effect that the jewellery which was entered in the passport was genuine personal jewellery while the two Gold Karas were nothing more than an attempt to smuggle Gold into India in the garb of personal jewellery. Merely because the petitioner is a British citizen does not make her above the law. Every tourist has to comply with the rules and regulations which prevail in India and if a tourist like the petitioner tries to circumvent the law and smuggle or bring into the country unauthorisedly Gold then she must suffer the consequences when she is caught. When the customs authorities, like in the present case, come to the conclusion that what is sought to be brought into the country is not bonafide personal jewellery or any other article of high value meant for use by the tourist then the Customs authorities would be fully justified in confiscating the same. Learned counsel for the petitioner also cised two decisions of the Tribunals in an attempt to show that re-export should have been ordered. In our opinion this is a wrong understanding of the law. Whenever an attempt is made to smuggle goods into the country whether by a tourist or by a professional smuggler and the article is recovered by the Customs authorities then unless and until the Customs authorities come to the conclusion that the article is for bonafide use of the passenger the question of a right to re-export being granted does not arise. The rules in this country clearly indicate the value of the articles which can be brought, the number and quantity of the articles which can be brought and if there is an attempt to violate the law then the person must suffer the cnsequences.

(13) In our opinion there is no merit in this writ petilion and the same is dismissed.

