
(1984) 06 KAR CK 0025

In the Karnataka High Court

Case No : Writ Petition No's. 4614 to 4616 of 1978

Jeevaraj and Others

APPELLANT

Vs

Collector of Customs and Central Excise, Bangalore and Others

RESPONDENT

Date of Decision : 14-06-1984

Acts Referred:

Constitution of India, 1950 — Article 226

Customs Act, 1962 — Section 110 (2), 111 (d), 112 (b) (i), 119

Citation : (1984) 3 ECC 71 : (1985) 22 ELT 44

Hon'ble Judges : K.S. Puttaswamy, J

Bench : Single Bench

Judgement

1. On 22-4-1969 the proper officer authorised by the Customs Act, 1962 (Central Act No. 52 of 1962) (hereinafter referred to as the Act) searched non-residential premises bearing No. 86/16 Chowdeshwari Temple Street, Bangalore City at which place certain business was carried on under the name and style of "B. Vimal & Co." While the search and seizure at that place was in progress, the petitioners in Writ Petitions Nos. 4614 and 4615 of 1978 were present and in their presence, the said officer seized a bunch of keys. Accompanied by those persons, the said officer then proceeded to a residential premises bearing No. 13 situated on V Main, 38th Cross, V Block, Jayanagar Bangalore-11. On reaching the said place, the said officer in the presence of those persons and the panchas, opened the locks of the said building with the keys of earlier seized by him. After that, the said Officer searched and seized 6,000 tolas of gold kept in a steel almirah found in the said building.

2. From 22-4-1969 and onwards the gold and other articles seized continued to be in possession of the authorities. But, on 3-10-1969 the Collector of Central Excise, Bangalore (hereinafter referred to as the Collector) made an order under the proviso to sub-section (2) of Section 110 of the Act granting extension. The said order that in material reads thus :

"C. No. VIII/10/23/69 Cus. OR/16/69, dated 3-10-1969. ORDER UNDER PROVISIO TO SUB-S.(2) TO S. 110 OF CUSTOMS ACT, 1962.

Whereas 6,000 tolas of gold in 600 pieces of 10 tolas each bearing foreign markings was seized from the premises No. 13, V Main Road, 38th Cross, V Block, Jayanagar, Bangalore-11, by the Central Excise Headquarters Staff, Bangalore on the midnight of 22-4-1969, and whereas sufficient cause has been shown to me to the effect that the show cause notice in this case cannot be issued within the period of 6 months of the seizure, I in exercises of the powers conferred on me under proviso to sub-section (2) to Section 110 of Customs Act, 1962, hereby grant extension of time up to 20-4-1970 for issue of show cause notice u/s 124 of Customs Act, 1962.

Collector of Customs and Central Excise, Bangalore."

3. On 13-4-1970 the Collector issued show cause notices to the petitioners and others by registered post acknowledgment due proposing to confiscated the seized goods under the Act. But, the said notices issued to the petitioners were not served for one or the other reason and they were actually served on them on 11-6-1970 to which they showed cause. On an examination of the same, the Collector made an order on 20-9-1971 (Exhibit B) and the operative portion of that reads thus :

"I accordingly confiscate the said 6,000 tolas of foreign marked gold u/s 111(d) of Customs Act, 1962.

I also confiscate the six cotton jackets and the Chandan Steel Almirah u/s 119 of Customs Act, 1962 :

I further impose penalties on the following persons as shown below u/s 112(b)(i) of Customs Act, 1962.

(1) Shri Jeevaraj Babootmal Jain Rs. 2,00,000 (Rupees Two Lakhs only) (petitioner in W.P. 4614 of 1978).

(2) Shri Panachand Bikamchand Rathod Rs. 2,00,000 (Rupees Two Lakhs only) (petitioner in W.P. 4615/1978).

(3) Shri Parasmal Babootmal Jain Rs. 50,000. (Rupees Fifty thousand only) (petitioner in W.P. 4616/1978).

Against this order, the petitioners filed three separate but identical appeals before the Central Board of Excise and Customs, New Delhi - respondent 2 (hereinafter referred to as the Board) with applications for stay. On the applications for stay the Board made conditional orders with which the petitioners did not comply and, therefore, the Board on 30-1-1974 by its separate but identical orders (Exhibits C, D and E) dismissed them without examining the merits. Against the said orders of the Board and the Collector, the petitioners filed three revision petitions before Government of India, which by its common order dated 22-8-1977 (Exhibit E) dismissed them. In these petitions

under Article 226 of the Constitution, the petitioners have challenged the orders made by Government, Board and Collector.

4. Firstly, the petitioners have urged that the order made by the Collector on 3-10-1969 without notice and affording them an opportunity of hearing was violative of the proviso to sub-section (2) of Section 110 of the Act and the principles of natural justice, and was void in law. On this premise they have urged that all other proceedings initiated against them and the impugned order made against them under the Act are void in law and nonest. Secondly, they have urged that the show cause notices issued were barred by time and the proceedings initiated against them for confiscation and levy of penalty under the Act are void in law. Alternatively, they have urged that the imposition of personal penalties are based on no evidence. On these grounds, the petitioners have sought for quashing the impugned orders and return of 6,000 tolas of gold seized on 22-4-1969.

5. In their return, the respondents have not disputed that the order dated 3-10-1969 made by the Collector was without notice to the petitioners and providing them an opportunity of hearing and that the show cause notices were served on them only on 11-6-1970. But still the respondents have justified them, the proceedings initiated and the order made thereon on various grounds to which I will advert at the appropriate stages.

6. Sri J. Jeshtmal, learned Counsel for the petitioners, strenuously contends that the order passed by the Collector on 3-10-1969 (Annexure A) was in contravention of the proviso to Section 110(2) of the Act and the principles of natural justice. In support of his contention Sri Jeshtmal strongly relies on the ruling of the Supreme Court in Assistant Collector of Customs Vs. Charan Das Malhotra, .

7. Sri. K. Shivashankar Bhat, learned Central Government Senior Standing Counsel, appearing for the respondents, without disputing the invalidity of the order, has urged that the same does not affect the validity of the proceedings for confiscation and imposition of penalties under the Act.

8. Earlier, I have noticed that the plea of the petitioners that the order made by the Collector on 3-10-1969 was without notice and affording them an opportunity of hearing has not been disputed by the respondents in their return or at the hearing also.

9. In Assistant Collector of Customs Vs. Charan Das Malhotra, the Supreme Court has ruled that the power exercised u/s 110(2) was quasi-judicial and that power can be exercised only after notice and providing an opportunity of hearing to the affected person. On the principles enunciated in Charandas Malhotra's case, it has to be held that the order made by the Collector on 3-10-1969 was in contravention of the Act and the principles of natural justice. Whether such an order was void in law or was only voidable is not free from doubt. But for purposes of these cases, I will assume that the said order is void in law and

examine the order questions on that basis.

10. Sri Jeshtmal strenuously contends that when once the order dated 3-10-1969 is held to be void in law, every order, proceedings, in particular, those for confiscation and imposition of personal penalties are necessarily void in law and, therefore, the petitioners as of right are entitled to the return of 6,000 tolas of gold seized on 22-4-1969. In support of his contention, Sri Jeshtmal strongly relies on a ruling of the High Court of Calcutta in *Uma Rajeshwar Rao Patra v. Union of India* 1978 Cen Cus 235 D.

11. Sri Bhat contends that even if the order dated 3-10-1969 is held to be void in law, the same does not affect the validity of the proceedings for confiscation and imposition of personal penalties and that in any event the petitioners are not entitled for the return of gold. In support of his contention, Sri Bhat strongly relies on the ruling of Madras, Punjab and Haryana and Bombay High Court in *Collector of Customs and Central Excise v. Amruthalakshmi* AIR 1976 Mad. 43 : *Muni Lal Vs. The Collector of Central Excise, Chandigarh*, and *Mohanlal Devdanbhai Choksey and Others Vs. M.P. Mondkar and Others*,

12. Chapter XIII deals with searches, seizure and arrest under the Act. S. 110 that occurs in Chapter XIII empowers the seizure of goods and their retention and the orders to be made for such retention. Section 110(2) empowers the proper officer that has seized the goods to retain them in the first instance for a minimum period of six months from the date of such seizure without making an order for the same. If the officer finds it necessary to retain the same for a longer time before the expiry of that time, then he can retain the same for another six months by making a specific order thereto for a sufficient cause and not otherwise.

13. Chapter XIV of the Act deals with confiscation of goods and conveyances and imposition of penalties under the Act. The confiscation empowered by Section 111 occurring in Chap. XIV can be of goods that are seized u/s 110 of the Act and other classes of goods detailed in the former section. The procedure for confiscation and imposition of penalties are elaborately dealt in the various provisions found in Chapter XIV of the Act.

14. Chapters XIII and XIV of the Act are two independent, distinct and separate chapters. A fortiori the provisions found in these two chapters are separate and distinct and are intended to achieve different and separate purposes. The provisions found in one chapter are not controlled by the provisions found in another chapter at all.

15. In Section 110 of the Act occurring in Chapter XIII there is a reference to S. 124 found in Chap. XIV of the Act. Section 124 only provides for issue of a show cause notice before making an order for confiscation of goods. But this does not in any way control Section 110 of the Act. On the same reasoning the converse also is true. The invalidity of an order made u/s 110 does not in any way affect the validity of a proceeding initiated and completed under Chapter XIV of the Act.

In the cases relied on by Sri Bhat, the High Courts of Madras, Punjab and Haryana and Bombay have also taken a similar view. I am in respectful agreement with the views in all those cases.

16. But, in Uma Rajeshwar Rao Patra's case (1978 Cen-Cus 235D), Amiya Kumar Mookerji, J of the High Court of Calcutta examining a similar question almost on similar facts has expressed thus :

"15. The power of confiscation is not restricted only to the seized goods. In Sections 111, 112 and 124 the words "any goods", "any person" are used. These words cannot be given a restricted meaning. Moreover, an order of confiscation rests on the theory of offending goods. Where the goods have been unlawfully imported, these goods became the offender and they might be confiscated without finding out the actual importer. But, for the purpose of confiscation of the goods physical existence of the goods are necessary. When seized goods are returned to the owner, in that case, the returned goods lose the character of "offending goods" and as such these goods could not be confiscated. It is true that Section 110 and Section 124 are two independent sections and time-limit as specified in sub-section (2) of S. 110 does not control the issue of notice u/s 124. But even then there is a connecting link between the notice of confiscation of the goods and retention of the seized goods.

* * * * 21. Now coming to the facts of this case, it appears that no notice u/s 124 was given within six months of the seized goods. The Collector of Customs also did not extend the period after giving the owner of the goods a reasonable opportunity of being heard. Two conditions have been laid down in Section 110 when the seized goods can be retained : (a) when notice u/s 124 is given within a period of six months from the date of the seizure of the goods; (b) when the Collector after hearing the owner of the goods, extends the period of six months. Besides these there is no other provision in the Act which empowers the customs to retain the seized goods. The provisions of Section 110(2) are mandatory, the goods "shall be returned to the person from whose possession they were seized".

22. Where under the law the goods "shall be returned", in my view, such goods retained unlawfully could not be confiscated under the Act. The goods which must have been returned under the law, were retained by the Customs contravening the mandatory provisions of Section 110(2) of the Act. A statutory authority exercising statutory powers cannot act contrary to law. There could not be any decision in an adjudication proceeding under the Act. If inherent nullity lies at the very root of the said proceeding, a quasi-judicial authority in exercising quasi-judicial powers cannot take advantage of its own illegality. The whole object of Section 110(2) of the Act becomes nugatory and meaningless, if by contravening the mandatory provision of the statute the Collector of Customs confiscated the seized goods which he has no right to retain and must have been returned to the owner long before". With great respect to his Lordship, these principles that do not flow from the provisions of the Act, cannot also be upheld on any legal or juristic principle. For the very reasons given by me earlier, and

the High Courts of Madras, Punjab and Haryana and Bombay in the cases noticed earlier, with respect, I cannot persuade myself to concur with these views expressed by Amiya Kumar Mookerji, J. in Uma Rajeswar Rao Patra's case."

17. Sri Jeshtmal next contends that on the show cause notices which had been served on the petitioners, indisputably after one year of seizure, it was imperative to initiate and complete proceedings for confiscation and imposition of personal penalties under the Act. In support of his contention, Sri Jeshtmal strongly relies on a Division Bench ruling of the High Court of Gujarat in Ambalal Morarji Soni Vs. Union of India and Others,

18. Sri Bhat contends that service of notice within one year was not a sine qua non for initiation and completion of the proceedings under the Act.

19. Earlier, I have held that Chapters XIII and XIV of the Act are intended to serve two different purposes. Even otherwise, none of the provisions in these two chapters declare that if a show cause notice is not issued or served, within one year of the date of the seizure, then the proceedings for confiscation and imposition of penalties cannot be completed, under the Act and that all proceedings thereto automatically abate or lapse. In the absence of an express statutory provision providing for a special situation, the Court cannot reach such an extreme conclusion on any legal principle.

20. In Ambalal Morarji Soni Vs. Union of India and Others, the Gujarat High Court was not considering the provisions of the Act but was considering the provisions of Gold Control Act that are not in pari materia or analogous to the Act. A decision rendered on an entirely different enactment, assuming that the same is also correct, cannot be applied to a situation arising under an entirely different enactment. In my view the ratio in Ambalal Morarji Soni's case does not bear on the point and assist Sri Jeshtmal. For all these reasons, I see no merit in this contention of Sri Jeshtmal and I reject the same.

21. Sri Jeshtmal contends that when once it is held that the order dated 3-10-1969 was illegal and void, the petitioners were entitled for the return of the gold notwithstanding any later order made for its confiscation.

22. Sri Bhat contends that the petitioners were not entitled for the return of gold both on facts and law.

23. Before the Collector, the petitioners expressly disclaimed their title to the gold seized on 22-4-1969. All of them have stated that the gold does not belong to them and belongs to one Sri Shyam Sunder of Gujarat State who has not been traced in spite of all efforts by the department and who has not come forward to claim the same before the authority or before any Court.

24. When the petitioners expressly and deliberately disclaimed their title to the gold seized and pleaded that the same belongs to another person, they cannot on any principle of law, claim for the return of the same before this Court, that too in a petition under Article 226 of the Constitution, whatever be the illegality

in its seizure or its retention. On this short ground, I reject this claim of the petitioners.

25. Sri Jeshtmal lastly contends that the penalties imposed on the petitioners are based on no evidence and in any event are disproportionate to the gravity of the offence, if any, committed by them.

26. Sri Bhat sought to justify the penalties imposed against the petitioners.

27. Let me first examine the case of the petitioner in Writ Petition No. 4614 of 1978.

28. At either of the place of inspection and seizure by the proper officer, the petitioner in Writ Petition No. 4616 of 1978 who happens to be the younger brother of the petitioner in Writ Petition. 4614 of 1978 was present. At the relevant time he was only a student and was not doing any business at all. Unfortunately the Collector has roped in this petitioner solely on the ground that he is related to the petitioner in Writ Petition No. 4614 of 1978 and not on any other reason or evidence. On any principle a person cannot be roped in solely on the ground that he is related to another person that is found to have committed an offence. From this it follows that the finding and the imposition of penalty against this petitioner which is based on no evidence, but on mere surmises, cannot be upheld.

29. So far as the other petitioners, the authorities have found that they were found in possession of contraband gold. The findings of the authorities against these petitioners is based on evidence and their own statements. Hence, the same cannot be interfered with by this Court is excise of its supervisory jurisdiction under Article 226 of the Constitution.

30. But, in imposing a penalty of Rupees 2,00,000/- on each of these petitioners, the Collector has given reasons. Both the appellate and the revisional authorities have not examined this aspect and have not also given reasons. Even on the quantum of penalty to be imposed, the authorities cannot act arbitrarily. A decision on this aspect also should be on the application of mind and must be supported by reasons which are lacking in the case of these petitioners. In this view, there is no other alternative for this Court except to quash the imposition of penalties against these petitioners and direct the Collector to re-examine and decide the same.

31. In the light of my above discussion, the following orders and directions :-

(1) I quash the order of the revisional and appellate authorities and the Collector to the extent they impose penalty of Rs. 50,000/- against the petitioner in W.P. No. 4616 of 1978 in its entirety :

(2) I quash the impugned orders only to the extent they impose personal penalties of Rs. 2,00,000/- against the petitioners in W.P. Nos. 4614 and 4615 of 1978 and direct the Collector of Customs and Excise-respondent 1 to re-examine

that aspect only and impose such penalties as he deems proper on each of them which, however, in any event, shall not exceed the original amount earlier imposed by him.

32. Writ petitions are disposed of in the above terms. But in the circumstances of the case, I direct the parties to bear their own costs.