(1981) 09 DEL CK 0019

In the Delhi High Court

Case No : Civil Writ No. 915 of 1971

J.R. Sehgal APPELLANT

Vs

Collector of Central Excise, New Delhi and another RESPONDENT

Date of Decision : 15-09-1981

Acts Referred:

Citation : (1983) 12 ELT 760

Hon'ble Judges : S.B. Wad, J

Bench : Single Bench

Judgement

1. The Assistant Collector of Customs and Central Excise, Goa, vide their letter F. No. 5/3/70-Ral, dated 19-1-1970 intimated to the Delhi Office that one National T.V. set under C/N. No. 497414, dated 5-1-1970 was consigned by one Capt. V. K. Sehgal to Shri J. R. Sehgal, the petitioner, residing at Delhi. It was further intimated that Capt. V. K. Sehgal had not declared any T.V. Set on the Private Property List filed by him, nor was he signed off the Vessel. The letter requested that the T.V. set may be seized for carrying out further investigations in the matter. On 5th February, 1970 Shri Bhatnagar, Customs Inspector visited the residence of the petitioner for seizing the T.V. set. The dispute between the parties is whether this T.V. set was actually seized by Mr. Bhatnagar on the date or not. But it is an admitted fact that the petitioner appeared in the office of the Collector of Customs and gave an undertaking that he would not dispose of the same and would produce the same as and when required. The contention of the petitioner is that after seizing of the T.V. it was not physically removed because of the acceptance of the undertaking by Mr. Bhatnagar on behalf of the Department. The petitioner further asserts that the instrument being delicate it was not physically removed by the said Inspector. The petitioner submits that the Department ought to have passed an order u/s 110(1) directing the petitioner from not removing or disposing of the same without the previous permission of the Department. Section 110(1) reads as follows :-

"(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods :

Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer".

The petitioner further contends that it is not the case of the respondent that T.V. set was one of the articles mentioned u/s 123 of the Customs Act or any notification made there under. It is then contended that no further action was taken by the Department u/s 124 within six months of the seizure of the goods. It is argued that the mandatory requirement of this u/s 110(2) is that, if no action is taken within six months or within the extended period, u/s 124 the T.V. set should be returned to the petitioner. The petitioner argues that since the T.V. set was not physically removed, returning of the T.V. set u/s 110(2) in the present case would mean that the possession of the petitioner should not be disturbed in terms of his undertaking. As the petitioner apprehended that the department was likely to interfere with his possession the present writ petition was filed.

2. The respondents, however, submit that the T.V. set was not actually seized by Mr. Bhatnagar. They further say that since there was no seizure by the Department, there was no question of non-compliance of Section 110(2) read with section 124 of the Act. Their further case is that the T.V. set in question was smuggled one. They rely upon on the statements of Capt. V. K. Sehgal and shri Hitler Gaspar (Annexures R2 & R3). Capt. V. K. Sehgal had stated in his statement that he had not booked the consignment in question. Hitler Gasper who was working as I.A. Officer at Dabolin Airport, Goa, had stated in his statement that on 5-1-1970 a person approached him for booking the T.V. parcel to Delhi and gave his name as Capt. V. K. Sehgal. The Department found Capt. V. K. Sehgal''s statement untrue. To this assertion of the Department the petitioner''s submission was that he was under the impression that T.V. set was sent to him by Capt. V. K. Sehgal as a marriage present. However, it transpired that the set was actually sent from Goa by his brother Shri A. L. Sehgal who was in Goa from end of December to 7th January, 1970. Shri A. L. Sehgal appeared before the Department and gave a statement that he had purchased the second hand T.V. set from an unknown foreigner on 3-1-70 against the receipt. In the counter-affidavit the respondents stand is that the said receipt was procured consequently by A. L. Sehgal, and the story given by Shri A. L. Sehgal was incredible.

3. It is not shown by the Department whether importation of T.V. set was banned u/s 123 or any notification there under at the relevant time. Although ten years have passed, the Department has not completed the investigation. If they wanted, they could have moved this Court for the early hearing of the writ petition. The petition was admitted in 1971 and an order restraining the respondents from removing the T.V. set was confirmed by this Court on

12-10-1971. While confirming the stay, this Court directed that the writ petition should be listed in the week commencing 6th December, 1971. Number of adjournments were taken by the respondents to file Annexures R2 and R3 which although mentioned in the writ petition were not filed along with the writ petition. On December 19, 1972 the learned Judge hearing the matter gave the respondents last opportunity to produce the said documents. It appears that the documents were filed sometime thereafter. However, there is nothing on record to show that the respondents prayed for early hearing of the writ petition.

4. It is difficult to believe that the he Customs Inspector Bhatnagar who was specifically directed to seize the T.V. set from the petitioner did not actually seize the set. On the facts of the case it is fair to conclude that Mr. Bhatnagar seized the set but did not physically remove the same because of the petitioner''s undertaking. If the department was really of the opinion that they had not actually seized the set on 4-2-70 when Inspector Bhatnagar visited the petitioner''s residence they could have easily done so thereafter. Mr. Bhatnagar went to the petitioner''s house on 4-2-70 and the writ petition was admitted by this Court eighteen months thereafter, namely, on 23-8-1971. On that date the Admitting Bench passed an interim order restraining the respondents from removing the set. In these circumstances it has to be presumed that although the set was seized by the Department, no order u/s 110(1) was found necessary to be passed by the Department permitting the petitioner to retain the set, due to the undertaking given by him. It may be noted that after the set was received at Delhi the petitioner procured the proper license for its use from the postal authorities at Delhi.

5. As I have held that the Department had in fact seized the T.V. set, there is a clear case of non-compliance of Section 110(2) read with Section 124 of the Act. As no action was taken within six months or the extended period u/s 124, the Department cannot take any further action in this matter. The Department is bound to return the T.V. set to the petitioner. On the facts of the case this would mean that the possession of the petitioner cannot be disturbed and no action can be taken against the petitioner for the alleged illegal importation of the T.V. set and its possession.

6. The petition succeeds with costs. Rule is made absolute.

