

(1975) 02 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 657 of 1974

K.K. Sukhani

APPELLANT

Vs

Union of India(UOI)

RESPONDENT

Date of Decision : 24-02-1975

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Customs Act, 1962 — Section 105, 110(1), 110(2), 113, 114

Citation : (1999) 110 ELT 505

Hon'ble Judges : S. Ali Ahmad, J;B.D. Singh, J

Bench : Division Bench

Advocate : Jagdish Sahay, Braj Kishore Prasad, Kamal Nayan Choubey, Ripudaman Pd. Sinha and Sashi Anugrah Narain, for the Appellant; Ashivani Kumar Sinha, for the Respondent

Final Decision : Dismissed

Judgement

S. Ali Ahmad, J.—In this application under Articles 226 and 227 of the Constitution of India, a number of reliefs were prayed for which included a prayer for a declaration that the provisions of the Customs Act, 1962 and the provisions of the Imports and Exports (Control) Act, 1947 and that the Export Control Order, 1958 were ultra vires the Constitution. Another prayer was that Annexure "7" (Order passed by the Collector of Central Excise, Patna, respondent No. 3 by which he confiscated 25 packages of mica) and Annexure "8" (appellate order dated the 12th of March, 1974, upholding Annexure "7") be quashed. It was also prayed that a direction be issued by this court to deliver back the seized mica to the petitioner forthwith.

2. When this application was placed for admission before Chief Justice Untwalia (as he then was) and S.K. Jha, J., on the 19th of July, 1974, their Lordships observed that the application was not fit to be admitted, because the petitioner had not exhausted his remedy u/s 131 of the Customs Act, 1962, of going in revision before the Central Government against the appellate order of the Board.

However, their Lordships admitted the application on the ground that, according to the learned Counsel for the petitioner, there was one clear point of law involved in the case which was covered by the authority of a decision of the Supreme Court in the case of *The Assistant Collector of Customs and Superintendent, Preventive Service Customs, Calcutta v. Charan Das Malhotra* 1983 (13) E.L.T. 1477, in relation to violation of the provisions of Section 110 (2) of the Act. Therefore an undertaking was given on behalf of the petitioner that the only point which would be pressed at the time of hearing of the writ application would be in relation to the violation of Section 110(2) of the Act and the consequential point of Section 114 of the Customs Act, 1962. Thus, the petitioner obtained only a limited rule.

3. The facts giving rise to this application are that the petitioner is the owner of Mica Mines of Jhumri Tilaiya and owns a mica factory at Giridih. On the 12th of July, 1969, he entered into a contract with one M/s. B.L. Sharma and Co., Kirat Nagar, Nepal. According to the said contract (Annexure T), the petitioner undertook to supply 32 cases of mica to M/s. R.L. Sharma and Co, Before their despatch to Jogbani for making delivery to M/s. R.L. Sharma and Co., the mica was to be inspected by Shri Sharma and one Mr, Gupta (Broker). After the Mica was inspected and approved by Shri Sharma and Shri Gupta, the cases containing mica were to be despatched to Jogbani where delivery was to be made against full payment. On a request from M/s. R.L. Sharma and Co,, the petitioner transported 34 cases of mica under the Bihar Government Passes Nos. 526296, dated the 26th of July, 1969, 526297, dated the 18th of August, 1968, 526298, dated the 19th of August, 1969 and 526299, dated the 26th of August, 1969, from the petitioner's factory at Giridih to Calcutta for inspection of the same by the said Shri Sharma and Shri Uttamlal Gupta. The thirty-four cases of mica were inspected by Shri Sharma and Shri Gupta. They approved mica contained in 25 cases and rejected the rest. Accordingly, they requested the petitioner to despatch the approved 25 cases immediately and said that the balance could be despatched after proper checking. Accordingly, the petitioner dispatched the cases of mica in two lots - one containing 25 cases and the other containing 7 cases to Jogbani. The petitioner despatched 25 wooden cases containing mica as approved by M/s. R. L. Sharma and Co. by consignment note No. 6723, dated the 5th of September, 1969, to Jogbani. These cases of mica were marked "K. K. Sukhani" and "K. K. Sukhani, Giridih" with rubber stamp and the consignment was sent by M/s. Bombay Haryana Transport Organisation showing the consignor as "K. K. Sukhani" and consignee "Self". After the despatch of these 25 cases of mica on the 5th of September, 1969, a public notice was published in Gazette of India, dated the 8th of September, 1969 (Annexure "4") which read as follows :

"Annexure-4. -Public Notice No. 9-ETC(PN)69, dated 8-9-1969.

Item No. 4 (c) - It has been decided that the

"...the export to Nepal of Mica splittings of various sizes appearing under Item No.

16 in Part "B" of Sch. 1 to the Exports (Control) Order, 1968" shall be regulated, with immediate effect, according to the provisions of the above quoted order."

It is not stated in the writ application as to when these 25 cases of mica reached Jogbani. All that is said is "that the said 25 cases of mica reached Jogbani earlier". According to the petitioner, it was not found suitable to keep the cases in the godown of the Transport Company on payment of rental as it was exorbitant. It was decided in the circumstances by the said Shri Uttamlal Gupta to shift the 25 cases to the house of a commission agent, namely, Suryakant Mishra, at a lesser amount of rental. According to the petitioner, on the 27th of October, 1969, the Customs Officer purporting to exercise his powers u/s 105 of the Customs Act, 1962 arbitrarily and in colourable exercise of his powers under misconception raided the premises of Shri Suryakant Mishra and seized the 25 cases containing mica. It is said that these 25 cases of mica were illegally and improperly seized. It is also said that the above-mentioned cases of mica were not meant for smuggling; they were not seized in the process of being surreptitiously exported to Nepal nor was there an iota of material of actual attempt to export the mica in question to Nepal- These 25 cases were stored in the house of Shri Suryakant Mishra which was done solely with the object of avoiding demurrage from the transport organization. The petitioner did not know of the seizure as Shri Uttamlal Gupta, the Broker, did not inform him. When the petitioner, subsequently, came to know of the seizure by the Customs authority, he wrote several letters to the Customs authorities, Patna, claiming the seized cases of mica as his own and praying release of the same without delay. A letter dated, the 8th of January, 1970 (Annexure "5") was also sent on his behalf by a solicitor in which it was stated that no show cause notice was issued and that the seizure was bad. In that letter, a request was made that the provision of law under which the goods were seized should be communicated to him. The petitioner makes a grievance that no action was taken on this letter also. Respondent No. 3 issued show cause notice No. 044002 C-No. VIII-(10)21/Cus./70/11780, 3-10-1970, dated the 25th September, 1970, to the petitioner. By this notice, the petitioner was directed to show cause to the Collector of Customs, Patna, as to why the seized goods mentioned in the notice should not be confiscated u/s 113 of the Customs Act, 1962 and why penalty should not be imposed upon him u/s 114 of the Act. A copy of this show cause notice has been marked as Annexure "6" to the writ application. The petitioner filed his show cause petition in which, inter alia, it was stated that there was no prohibition, restriction or control in respect of storing of mica in India, and as such, storage of mica did not constitute violation of any of the provisions of the Customs Act, 1962 or imports and Exports Control Act, 1947 or any order issued under the provisions of the said two Acts. It was also said that the mica recovered from the house of the storing agent, Shri Suryakant Mishra, was not liable to seizure or confiscation. The Assistant Collector, Central Excise (respondent No. 3) on a consideration of the show cause, by his order dated the 16th of August, 1971, ordered confiscation of the 25 cases of mica to the Union Government u/s 113 of

the Act and imposed a personal penalty of Rs. 10,000/- u/s 114 of the Act. This order passed by the Assistant Collector, Central Excise, Patna, has been marked as Annexure "7" to this writ application. Against that order, the petitioner preferred an appeal before the Central Board of Excise and Customs u/s 28 of the Customs Act, 1962. The appeal was heard by Shri S. Venkatesan, Member, Central Board of Excise and Customs, who, by his order, dated the 14th of March, 1974 (Annexure "8") rejected the appeal. The petitioner, thereafter, filed this application in this court on the 30th of April, 1974. I have only referred to such of the facts mentioned in the writ application which are relevant for the purpose of deciding the points raised by the learned Counsel for the petitioner. Other facts which have no relevancy to the question in issue have not been mentioned which stating petitioner's case.

4. Respondents have appeared and have shown cause by filing an affidavit. Their case, in short, is that mica was seized on the 27th October, 1969. The period of six months as provided in Section 110(2) of the Act was to expire on the 26th of April, 1970. Investigation was not likely to be completed within that period. In the circumstance, the Collector of Customs and Central Excise, Patna, on the recommendation of the Assistant Collector, Customs, extended the period by another six months by his order, dated the 18th of April, 1970. It has also been stated in the counter-affidavit that the petitioner did not come in the picture as the ownership of the mica was not established and that was the reason for not issuing show cause notice to the petitioner for the purpose of extending the period of six months. It is also stated "that, however, the representative of Shri K.K. Sukhani was informed of the extension which was granted on the 18th of July, 1970". It was on the basis of those facts, it is stated, that the extension of the period by six months was valid. Learned Counsel for the petitioner submitted that the 25 cases of mica were seized on the 27th of October, 1969, and the period of six months expired on the 26th of April, 1970, He contended that it was open to the Collector, on sufficient cause being shown, to extend the period of six months by a period not exceeding six months. According to the learned Counsel, the period of six months was not extended in accordance with law, and, as such, the continued seizure of the 25 cases of mica was illegal. He therefore, argued that, after the period of six months beginning from the 27th of October, 1969, the 25 cases of mica should have been returned to the petitioner. According to the learned Counsel, it was mandatory for the authorities to return the seized mica after the expiry of the period prescribed in Sub-section (2) of Section 110 of the Act. Learned Counsel further submitted that, since the respondents did not return the seized mica directing them to return the same. The orders Annexure "7" passed by respondent No. 3 confiscating 25 packages of mica and Annexure "8" the appellate order were also attacked as being illegal.

5. The question as to whether the period of six months was validly extended by respondent No. 3 has to be considered first. It is admitted that no notice to show cause as to why the period should not be extended under proviso to Sub-section (2) of Section 110 of the Customs Act was ever issued either to the petitioner or

to his representative. All that is said is that the representative of the petitioner was informed of the fact that the period of six months was extended by another six months under proviso to Sub-section (2) of Section 110 of the Act. Sub-section (2) of Section 110 of the Act provides that, when goods are seized under Sub-section (1) and no notice in respect thereof is given under clause (a) of Section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized. This rule is subject to a proviso according to which the aforesaid period of six months may, on sufficient cause being shown, be extended by the Collector of Customs for a period not exceeding six months. Learned Counsel has relied on a decision of the Supreme Court in the case of Assistant Collector of Customs Vs. Charan Das Malhotra, wherein similar question arose for consideration. Their Lordships of the Supreme Court have laid down that the power under the proviso to Section 110(2) is quasi judicial in nature. Their Lordships have said that the power of extending the period to give notice u/s 124(a) of the Act could be exercised only on sufficient cause being shown. Their Lordships have further said that the expression "sufficient cause being shown" must mean that the Collector must determine on materials placed before him that they warrant extension of time. Since, the power provided under the proviso to Sub-section (2) is not an administrative power it is necessary that an opportunity to show cause is given to the person concerned, so that he may satisfy the Collector that there was no sufficient cause for extending the period of six months. In this case, admittedly, no show cause notice was issued. In that view of the matter, the extension granted by the Collector on the 18th of April, 1970, cannot be said to be validly made. Respondent No. 2 while dealing with this aspect of the matter, has stated as follows :-

"The Board observes that in view of the law as laid down by the Supreme Court there can be no doubt that an extension of time for issue of show cause notice can only be given after issuing a notice to the person from whom the goods were seized and that if this is not done that person is entitled to the return of the goods. The Board, however, observes that at the time the extension was given by the Collector, the Supreme Court had not delivered its judgment and therefore apparently neither the Collector nor the appellant were aware of the correct position in law. In fact, the Collector has stated in his orders that the representative of the appellant was informed that an extension of the time for issue of the show cause notice was granted before the expiry of the initial period of 6 months. The Board, therefore, finds that the Collector was proceeding on the basis of the law as understood by him."

Respondent No. 2 is obviously wrong here. It may be that when the Collector passed the order, there was no decision of the Supreme Court on the subject but that does not change the position. The illegal action of the Collector on the basis of the law as understood by him will not make the order valid. The Supreme Court did not make any new law. All that their Lordships of the Supreme Court did was to lay down the law as it stood.

6. Having held that the extension granted on the 18th of April, 1970, was illegal, we come to the next stage. Learned Counsel for the petitioner submitted that, under Sub-section (2) of Section 110, the authorities were bound to return the seized cases of mica. For this proposition learned Counsel relied on the same decision of the Supreme Court (*supra*). Learned Counsel urged that the facts of that case were similar to the present one. He contended that the notice issued in that case u/s 124(a) of the Act after the expiry of six months was quashed by the Calcutta High Court and the seized watches were directed to be returned. The order passed by the Calcutta High Court was affirmed by their Lordships of the Supreme Court. Learned Counsel for respondents however submitted that the seized 25 cases of mica had already been confiscated and an appeal against the order of confiscation was also dismissed. According to him the fact that the cases of mica were not returned on the expiry of six months beginning from the 27th October, 1969, will not make the subsequent order of confiscation illegal and without jurisdiction. I think, there is force in this argument. Their Lordships of the Supreme Court (*supra*), while explaining Section 124 in paragraph 5 said "that no order confiscating any goods or imposing any penalty on any person shall be made unless the owner of the goods or such person is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty. The section does not lay down any period within which the notice required by it has to be given. The period laid down in Section 110(2) affects only the seizure of the goods and not the validity of the notice". It is thus obvious that the continued seizure of the 25 cases of mica after the 26th of April, 1970, may be illegal, but the notice u/s 124(a) was absolutely valid and any action taken on the basis of that notice, unless otherwise bad, will be legal. As appears from the facts reported (*supra*), no doubt, their Lordships of the Calcutta High Court had quashed the notice u/s 124(a) and also effected return of the seized watches, but the notice u/s 124(a) was quashed on the ground of being vague. No vagueness in the notice or any illegality or irregularity in the proceeding for confiscation in the instant case has been pointed out. That being the position, I do not think the petitioner is entitled to a direction to the respondents for return of the seized mica which had already been confiscated. I may here only refer to Section 113 which provides for confiscation of goods attempted to be improperly exported, etc. On the findings of respondent No. 3 and on appeal by respondent No. 2, the 25 cases of mica were attempted to be exported to Nepal contrary to the prohibitions imposed. On the basis of this finding, the confiscation cannot be said to be illegal. Again, u/s 114, penalty can be imposed on any person who in relation to any goods does any act which would render such goods liable to confiscation u/s 113. On the basis of those findings, the petitioner made himself liable to the penalty provided u/s 114. Therefore, the fine imposed on the petitioner also is not illegal. I may make it clear that it was not suggested that either the notice u/s 124(a) of the Act was illegal or the subsequent conduct of the proceeding was bad in any way. The mica contained in the 25 cases has been confiscated and u/s 126 of the Act it now vests in the Central Government. In that view of the matter, no direction can

be issued for their return. The application, accordingly, fails and is dismissed. In the circumstances of the case, there will be no order as to costs.

B.D. Sharma, J.

7. I agree.