

(1967) 12 MAD CK 0030
In the Madras High Court

K.M. Mohammed Ghouse and Co.

APPELLANT

Vs

The Collector of Central Excise and Another

RESPONDENT

Date of Decision : 20-12-1967

Acts Referred:

Customs Act, 1962 — Section 115

Citation : (1968) 2 MLJ 229

Hon'ble Judges : P.S. Kailasam, J

Bench : Division Bench

Judgement

P.S. Kailasam, J.—This petition is filed by a firm carrying on export and import business at Nagapattinam for the issue of a writ of certiorari calling for the records relating to the order dated 23rd November, 1965 of the Central Board of Excise and Customs, Government of India, New Delhi, quashing the said order, in Customs Appeal No. 100/65 confirming the order of confiscation of the boat by the Collector of Central Excise, Madras.

2. For the purpose of facilitating transport and loading of its export cargo in ships Which call at Nagapattinam Port and which are usually anchored about 4 miles from the shore, the petitioner was owning a boat. The boat bears Registration No. 12 in the Nagapattinam Port Office. On 29th June, 1963 the petitioner's boat was taken by Tindal Natarajan With the cargo for being loaded into " S.S. State of Madras ". It is stated that evening the petitioner received information from the Central Excise Office that boat No. 12 belonging to the petitioner-firm had been seized by the customs authorities on account of its being involved in smuggling of wrist watches from the ship and that Tindal Natarajan and other boat crew had been arrested. On and July, 1963 a statement was recorded by the Customs Collector of Nagapattinam, from one Abdul Salam, one of the partners of the petitioner firm. The petitioner disclaimed any kind of knowledge or responsibility for the alleged offence and prayed for the release of the boat to him. The petitioner firm was served With a show cause notice on 20th November, 1963 from the Deputy Collector of Central Excise, Tiruchirapalli, wherein it Was stated

that 150 watches were found in its boat on 29th June, 1963 and the petitioner was asked to show cause why boat No. 12 should not be confiscated u/s 115 of the Sea Customs Act, 1962. The petitioner sent a reply on 28th November, 1963. The first respondent passed an order on 19th August, 1964 finding that Tindal Natarajan and boat crew Subramaniam have transported the contraband watches and imposed a penalty of Rs. 100 on each of them u/s 112 (b) of the Act. The first respondent also ordered the confiscation of the boat u/s 115 (2) of the Act With an option to pay a fine of Rs. 5,000 in lieu of confiscation and clear the boat. Against the said order the petitioner preferred an appeal to the second respondent. During the pendency of the appeal Natarajan, Tindal of the boat and Subramaniam boat crew, Who were tried before the Sub-Divisional Magistrate of Nagapattinam, for the offence of importing 150 foreign Watches without a permit or license, were acquitted. The petitioner enclosed a copy of the order of acquittal to the second respondent with a letter dated 30th August, 1965 and prayed for the release of the boat. But the second respondent by an order dated 23rd November, 1965 upheld the order of confiscation u/s 115.

3. In this writ petition, several contentions Were raised. It was submitted that the criminal Court having acquitted the Tindal and the boat crew after finding that the prosecution had failed to establish that they smuggled the Watches, the Customs Authorities should have accepted the finding and held that there was no smuggling and released the boat. It was also contended that the Customs Authorities are Police Officers and therefore the statements made to them should not have been acted upon. On a consideration of the evidence adduced before him, the Customs Collector came to the conclusion that there was material for finding that both Subramaniam and Natarajan were concerned together in the act of receiving the contraband Watches from the ship bringing them to boat No. 12, concealing them therein and thus transporting them clandestinely to the shore. For arriving at this conclusion, the Collector relied on the statement made by Subramaniam on 29th June, 1963 that the packets containing the watches Were handed over to him by his brother-in-law Ramamurthi aboard the ship and that he took up the responsibility for transporting them clandestinely to the shore by the boat in question. Natarajan also made a statement corroborating the statement of Subramaniam. But Natarajan stated that no credence should be given to Subramaniam's statement. One Thangaraj also made a statement implicating Natarajan by stating that the packets of watches Were received by Natarajan aboard the ship, brought to the boat in question and kept therein. On the finding that the watches were smuggled from the ship to the boat for the purpose of transporting them clandestinely to the shore and as the boat was used as a means of transport, the Customs Collector directed its confiscation. On appeal the finding of the Customs Collector was accepted. It was held that Natarajan, the Tindal of the boat, and Subramaniam the crew, were concerned in the act of receiving the contraband from the ship and concealing it in the boat which they were manning. As Natarajan, the Tindal, was in immediate control of the boat on behalf of the petitioner, u/s 115 (2) of the Act, the boat in question

was liable to be confiscated.

4. The main contention urged by the learned Counsel for the petitioner is that the criminal Court in a prosecution against Natarajan and Subramaniam found that the prosecution had failed and that the charges against Natarajan and Subramaniam were not made out. The criminal Court was of the view that the version of the accused that they did not transport or import the watches and that the statements were obtained from them by threat coercion, compulsion and ill-treatment cannot be ruled out entirely as quite improbable or impossible. However, the question whether the finding of the criminal Court is binding on enquiries conducted by domestic tribunals has been considered by the Supreme Court in *State of Andhra Pradesh v. Sree Rama Rao* (1964) 1 S.C.J. 364, and in *R.P. Kapur Vs. Union of India (UOI) and Another*, . These decisions were considered by this Court in *Rangarajan v. State of Madras* (1967) M.L.J.136 : (1967)1 M.L.J. 146, where it was held that a departmental enquiry against a Government servant can be initiated on the basis of certain facts even though the Government servant has been acquitted in a criminal prosecution on the same facts and that while a domestic tribunal will normally be bound to treat the decision of a competent Court as final and cannot purport to come to a different conclusion, on the same facts, it cannot be said that there is a complete prohibition against such tribunal coming to a different conclusion. This Court in *Krishna Chetty v. The Collector of Customs Madras W.P. No. 461 of 1959* has held that the mere fact that the criminal Court has rejected the statement of the accused as not voluntary would not debar the Customs Authorities from acting on these statements. The Court observed that if the order of the Collector of Customs was good and well-founded on the evidence placed before him, it cannot become vitiated by an order of a Magistrate passed in a separate criminal proceeding. In *H.L. Modi v. The Collector of Central Excise, Madras W.A. No. 45 1959* in a criminal prosecution the accused therein were acquitted, but the Customs Authorities found that on the materials placed before them, the offence had been made out. The Bench held that the observations of the learned Judge who disposed of the Criminal Revision Case acquitting the accused, and the conclusion reached by him in the said revision case, would not affect the validity of the departmental proceedings which have the sanction of the Sea Customs Act. The view of this Court in *Rangarajan v. State of Madras* (1967) 1 M.L.J. 146 : (1967) M.L.J. 136, was followed in *M.K. Mohamed Hussain v. The Central Board of Excise and Customs, New Delhi W.P. No. 2121 of 1965*; *M. K. Meeran Sahib v. The Collector of Central Excise, Madras W.P. No. 2437 of 1965*. The decisions cited above are clear authority for the proposition that under the Sea Customs Act the Authorities are entitled to proceed to adjudicate and discharge the duties imposed on them under the Act without reference to the conclusion, arrived at by the criminal Court. This point therefore fails.

5. It was next contended that the Customs Authorities should be deemed to be police officers and the statements made to them should not be admitted in evidence. A Full Bench of this Court in *Collector of Customs, Madras Vs. Kotumal*

Bhirumal Pihlajani and Others, , following the decision of the Supreme Court in Badku Joti Savant Vs. State of Mysore, , has held that the Customs Authorities are not police officers. In Criminal Appeal No. 135 of 1966, the Supreme Court has observed that the contention that was put forth before the high Court that a confessional statement to the Customs Authorities was hit at by Section 25 of the Evidence Act was not pressed before it in view of the decision in Badku Joti Savant Vs. State of Mysore, , which was a case under the Sea Customs Act. In view of the decisions of the Full Bench of this Court and the Supreme Court referred to above, this point will have to be rejected.

6. Lastly, the learned Counsel for the petitioner, submitted that it has not been proved that the conveyance, namely, the boat, was used as a means of transport in the smuggling of watches as the Customs Authorities seized the watches when the boat was stationary. This contention cannot be accepted as the boat is a conveyance and was intended to be used for transporting the smuggled wrist watches. It is not necessary that the prosecution should prove that the boat was actually moving. From the circumstances it is clear that the wrist watches were loaded in the boat for the purpose of being taken to the shore, and the facts would establish that the conveyance was used as a means of transport. u/s 115 (2), the conveyance is liable to be confiscated when it is used as a means of transport in the smuggling of any goods, unless the owner of the conveyance proved that it was so used without the knowledge or connivance of the owner himself, his agent or a person in charge of the conveyance. Though the plea of the owner was that he did not know anything, about the smuggling, there is no attempt to prove that the smuggling was without the knowledge or connivance of himself or the person in charge of the conveyance, that is, the Tindal Natarajan and the crew Subramaniam. The fact that Tindal Natarajan and Subramaniam were found guilty of smuggling by the Customs Authorities is not disputed. In the circumstances the order of confiscation is right and cannot be questioned.

7. The Writ Petition is dismissed. No order as to costs.