

(2003) 10 KAR CK 0056

In the Karnataka High Court

Case No : Writ Petition No"s. 22591, 22592, 22593 and 22594 of 2000

K.R. Shenoy

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-10-2003

Acts Referred:

Customs Act, 1962 — Section 114, 14, 2 (41)

Citation : (2004) 92 ECC 298 : (2004) 112 ECR 328 : (2003) 158 ELT 812 :
(2003) 6 KarLJ 396 : (2003) 4 KCCR 358 SN

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Lakshminarayana, for Kiran S. Javali, for the Appellant; P.S. Dinesh Kumar, Central Government Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

R. Gururajan, J.—The petitioner-Shenoy is challenging an order dated 20-12-1994, Annexure-A, confirmed in Order Nos. 1058 to 1062 of 1998 in C.A. Nos. 211 to 215 of 1995 and C.A. No. 441 of 1997 and C. No. 814 of 1997 by respondent 3 (Annexure-B) in this petition. The petitioner states that the officer attached to the respondent 2 registered a case against the petitioner and others. According to the investigating agency, one M/s. Sheth International, attempted to export goods alleged to be 80 Danier polyester textures yarn packed in 50 cartons and addressed to Al-Mutaiwie General Trading, Dubai. The said goods were to be exported by ship MV EL NIEL from New Mangalore Port on 1-2-1994. The goods were boarded on the ship for sailing after completion of all the Customs export formalities. The Directorate of Revenue Intelligence (DRI) on the basis of the information seized all the 50 cartons and found the same to contain building bricks covered with coir of no commercial value. In the light of the investigation, a show-cause notice was issued to the petitioner and others. Reply was obtained from the petitioner. Thereafter, the Collector of Customs has chosen to pass an order on 16-1-1995. The Collector in the order has chosen to confirm

the confiscation of 50 cartons along with the contents containing building bricks covered with newspaper and coir. He has also chosen to impose penalty on the petitioner. The petitioner was imposed a penalty of Rs. 1 lakh in the order. Aggrieved by the same, the petitioner filed an appeal before the CEGAT, Madras. The Appellate Tribunal, by a detailed order has chosen to confirm the order. The petitioner is therefore before me.

2. Respondents have entered appearance and they justify their action. They further say that the petitioner sought for time to deposit penalty amount before the CEGAT and time was granted. No amount is deposited.

3. W.P. No. 22592 of 2000 is a petition filed by Sri S.D. Kini challenging the very order that is challenged in the earlier writ petition. The petitioner in this petition was also issued with a show-cause notice in identical circumstances. Reply was obtained and thereafter, the Collector by a detailed order has chosen to confirm the confiscation and further the Collector has chosen to impose a penalty of a sum of Rs. 1 lakh in the impugned order. An appeal has been filed and the Tribunal in the appeal has confirmed this order. Statement of objection has been filed by the respondents. The respondent supports the order.

4. W.P. No. 22593 of 2000 is a writ petition filed by one Sri Pushparaj Shetty. He is also challenging the same order as in the earlier case. He was also issued with a show-cause notice. A reply was obtained and thereafter, a detailed order was passed by the Collector of Customs. The Collector of Customs in the impugned order has confiscated 50 cartons and in addition he has imposed a penalty of Rs. 1 lakh on the petitioner. The petitioner challenged the said order before the Tribunal and the Tribunal has confirmed the same. Respondents have entered appearance through their Standing Counsel.

5. W.P. No. 22594 of 2002 is a writ petition filed by Sri P.M. Nayak and he also reiterates the facts pertaining to show-cause notice and reply submitted by him. The Collector, by a detailed order confirmed the confiscation, in addition ordered payment of penalty of Rs. 3 lakhs on the petitioner. Respondents have entered appearance.

6. Since in all these four cases, the facts and the law are common, a common order is passed by me in this petition.

7. Sri Lakshminarayana, learned Counsel appears for the petitioners. He took me through the pleadings to contend that levy of penalty on the facts of this case is unwarranted and the penalty amount has to be set aside. He further argues that the Tribunal has committed a mistake in confirming the said order. According to the learned Counsel, even the quantum is excessive in these cases. He relies on Section 114 of the Act to contend that the maximum penalty leviable is only 5 times the value of the confiscated goods, namely the bricks and the old newspapers.

8. Per contra, Sri Dinesh Kumar, learned Senior Standing Counsel for the Union

of India, respondents, says that these petitions deserve dismissal at the hands of this Court. According to the learned Counsel, the Collector on facts has noticed the acts on the part of the petitioners and thereafter he has chosen to confiscate 50 cartons. He has further on the facts of this case has chosen to impose penalty amount with a view to arrest this tendency. On appeal, the Tribunal has noticed various admissions and facts and thereafter the Tribunal has chosen to confirm the said penalty order. According to the learned Counsel, both the orders are based on facts and require confirmation by this Court to arrest such acts.

9. Insofar as Section 114 is concerned, the learned Counsel says that an interpretation as suggested by the learned Counsel cannot be accepted. The "duty" as referred to in the section is to the original material and not to a defrauded material. In conclusion, he wants the order to be confirmed by me.

10. After hearing the learned Counsel, I have carefully perused the material on record.

11. This case revolves around the penalty imposed by the respondent. Admitted facts reveal that DRI received information with regard to export of some goods by ship MV EL NIEL from New Mangalore Port. Their further information is that goods were not in conformity with the declaration made in the four shipping bills. They board the vessel and they obtained 4 mates receipts dated 30-1-1994 in respect of export of 50 cartons of 80 Denier polyester textures yarn by M/s. Sheth International, Bombay to Al-Mutaiwie General Trading, Dubai. The packages were identified by the captain. On examination, it was noticed that the cartons contained building bricks, wrapped in coir. It was nothing but a fraud played on the Department. Bricks valued at Rs. 250/- and coir of no commercial value in place 80 Danier polyester textures yarn valued at US \$ 72,51,868. This according to the respondent is done in collection with C and F Agents and Customs House Agent. Enquiry was conducted. Statements were obtained. A detailed enquiry was conducted by the Collector and the Collector after noticing admissions and the material on record has ruled that the matter requires penal action u/s 114 of the Customs Act.

12. Insofar as Sri Pushparaj Shetty is concerned, he makes his findings based on the statement of Sri Kini and Sri Shenoy. Sri Pushparaj Shetty also admits that Sri Kini approached him to take up the export work. He had instructed S.D. Kini to undertake export on behalf of M/s. Seth International, Bombay only on documents without any goods and requested Sri Kini to cooperate with Krishnanand Shetty in this plot. The statement of Sri Kini reveals that Sri Pushparaj Shetty demanded freight charges of Rs. 64,000/- at Rs. 1,600/- per M.T. for the weight of 40 tonnes of cargo. Sri Kini, after consulting M.L. Seth paid the amount by way of DD in favour of Sri P. Venkataramana and handed over to Pushparaj Shetty. The amount was drawn from K.P. Shenoy's account along with the draft. He admits in the statement that DD of Rs. 64,000/- given by Kini was handed over to Krishnanand Shetty since Krishnanand Shetty and S.D. Kini owe him some money. From this, he draws an inference on facts that Sri Pushparaj

Shetty was aware of the illegal export proposed by Kini and has played his role. In these circumstances, the authority is right on facts in initiating penal action u/s 114 of the Act. In the light of petitioner's involvement, the authority has further ordered payment of Rs. 1 lakh as penalty, The Appellate Authority, noticing the submission has chosen to consider the statements of the parties. After noticing the material facts, he has confirmed the said findings. Both the facts finding authorities have confirmed the role of Sri Pushparaj Shetty. I do not find any contra-material available on record to upset a factual finding given by the two factual finding authorities.

13. Insofar as Sri Kini is concerned, the authority notices the statement of Sri Kini. He notices that he arranged for the building bricks and packed them in the cartons in his residence. He contacted Sri Pushparaj Shetty for arranging shipment for illegal export as per the bills stuck by the partner Shenoy. His admission is that he received Rs. 75,000/- for the services rendered by him to carry out this illegal export. He is also Ware of the plan of making export on behalf of M/s. Seth International. He admitted that he packed 50 cartons with bricks covered with newspaper and coir. His statement is supported by Sri Pushparaj Shetty, Sri Krishnanand Shetty and Sri Shenoy.

14. Here again, the authority notices the findings against Sri Kini on facts. When the same was challenged, the Tribunal noticing the role played by Sri Kini has confirmed the fact-finding of the authority. Here again I do not find any contra-material to dislodge this fact-finding order of the two authorities.

15. Insofar as Sri P.M. Nayak is concerned, it is seen from the material on record that Sri Nayak agreed and advised Sri M.L. Seth on the export without actual goods to be done through New Mangalore Port with the assistance of his co-brother Sri K.R. Shenoy and his friends. He admitted in his statement dated 17-2-1994 that he had assisted M.L. Seth for making all arrangements in Mangalore for consideration of 25% of the total declared value. He entrusted his work to his co-brother K.R. Shenoy. A confessional statement is also made by Sri Nayak. He was dismissed from his services from the Corporation Bank. His role is established on facts. The authority after noticing, has rightly in my view has levied penalty of Rs. 3 lakhs and the Tribunal on considering the facts has rightly accepted the said finding.

16. In the light of my discussion, I am not able to accept the argument that the petitioners are not so innocent in their respective roles in these cases. In fact, the Tribunal, after noticing the arguments has given its findings in para 10 of the order. He notices the statement of Sri Madhusudan Sheth, who is the principal offender and his statement has been corroborated. He further notices in para 12 the statement of Sri P.M. Nayak in the light of the submission of Madhusudan Sheth and after noticing, he accepts the findings. In para 13 this is what the Tribunal says:

"From this statement it is clear that P.M. Nayak was instrumental in assisting

Madhusudan Sheth of Seth International to get the export done. He is the brain behind arranging the building bricks for shipment, instead of the textures yarn to be exported under DEEC scheme. His submissions are corroborated by other persons who have given statement and the charges against them have been brought home".

17. Similarly, insofar as Sri Shenoy is concerned, the Tribunal in para 15 gives its ultimate findings.

18. Similarly, while considering the case of Sri Kini, the Tribunal notices the role played by him and thereafter it finds him guilty.

19. Insofar as Sri Pushparaj Shetty is concerned, the Tribunal again notices his role in para 17. Ultimately, in para 18, the Tribunal gives its final conclusion which reads as under:

"From all these statements, as stated therein there is entire , involvement of each other in carrying out the task of export of building brick instead of textures yarn with a view to defraud the Revenue. All were aware of the consequences that follow and it is the lure of money that has made them to indulge in these unlawful activities. Therefore, Collector's order holding these appellants guilty of the offences is required to be accepted".

20. These findings, in my view, cannot be disturbed in a writ petition. Writ petition is not a Court of appeal sitting in judgment over all factual findings. Two authorities have given their factual findings based on several admissions and several incidents. They cannot be upset by a writ Court unless a very strong perverse case is made out in accordance with law. No such attempt is made.

21. Having come to this conclusion let me see as to whether penalty is excessive as argued by the learned Counsel. In the case on hand, penalty levied ranges from Rs. 1 lakh to 3 lakhs. A fraud is played on the State by way of sending bricks with coir and newspapers as against the textures goods. The value of textures goods is \$ 72,580/- and as against this huge value of goods and papers worth Rs. 250/- were sought to be sent to Dubai. A clear cut plan has been hatched and but for the hard work put forth by DRI probably this would have gone unnoticed. The DRI in the given case has really done a good job in discovering a well laid plan of fraud by the petitioners. In the given set of circumstances and on the facts of this case, I do not think that penalty is excessive as sought to be made out by the petitioners. These penalties are to act as a deterrent measure as otherwise economy of this country is at stake. In these days of International Trade and Commerce, export plays a vital role in Indian economy. Unless a strong iron hand is available in detecting export frauds, the countries finance may suffer and ultimately the people would suffer. In the interest of economy and in the interest of larger section of the people, the levy of penalty has to be harsher to arrest this illegal export fraud by unscrupulous elements. Therefore, I have no hesitation in confirming the penalty levied in each one of the cases on each one of the petitioners.

22. However, before concluding, I must notice a technical legal issue raised by the petitioner. Learned Counsel refers to Section 113-D in the matter of confiscation of goods attempted to be improperly exported. He refers to Section 114(i) and (ii) in support of his contentions. He says that in the light of Section 113-D read with Section 114(i) and (ii) the maximum penalty leviable is five times the value of the goods.

23. Per contra, Sri Dinesh Kumar, learned Senior Central Government Standing Counsel says that any such interpretation would be unreasonable in the light of the object of arresting improper export of goods by the parties.

24. The argument of the petitioner, at the outset is very attractive. However, on opening the veils of this attractive argument, it could be seen that the said attraction is not warranted on the facts of this case. The value has been defined u/s 2(41) to mean the value thereof determined in accordance with the provisions of Sub-section (1) of Section 14. Section 14 provides for valuation of goods for the purpose of assessment. In the case on hand, the wordings used in Section 114 are the duty sought to be evaded on such goods or Rs. 1,000/-, whichever is greater. Sub-section (i) of Section 114 says that penalty would be not exceeding five times the value of the goods or Rs. 1,000/-, whichever is greater. The value of the defrauded goods cannot replace the value of the dutiable goods and five times is certainly not referable to an altered fraudulent goods as sought to be made out by the petitioner. Any such argument, if accepted would result in defeating the very object of levy of penalty and in arresting such fraudulent acts in terms of Section 114. Therefore, the argument of Sri Dinesh Kumar, learned Senior Central Government Standing Counsel has to be accepted in the larger interest of arresting revenue laws and in arresting such tendencies on the part of the unscrupulous elements. This submission of the petitioner stands rejected. In the result, I do not find any justifiable grounds to interfere with a well-reasoned fact-finding order confirmed by the Tribunal.

25. Petitions are rejected. No costs.