(1967) 04 DEL CK 0001

In the Delhi High Court

Case No : Civil Writ Appeal No. 18D of 1962

Mustaff APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 04-04-1967

Acts Referred:

Citation : (1967) 3 DLT 438

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

Bench : Single Bench

Advocate : S.S. Chadha, S.N. Shankar and N.S. Rao, for the Appellant;

Judgement

S.K. Kapur, J.

(1) On 29th September, 1958, Shri M. Ramaswamy, a dock passenger from Penang, arrived in India by S. S. Ra)ula. His person and baggage were searched by the Customs authorities and the inner bottom of the leather suit-case, a part of his personal luggage, was ripped open. 100 pieces of wrist watches embedded in the punched holes of card boards, were recovered from the false bottom of the suit-case. Before the seizure Shri M. Ramaswamy claimed that the suit-case was his personal property and he had purchased it about three months ago. After recovery of the watches, however, he stated that the suit-case containing the wrist watches had been handed over to him by one Mr. Ramiah at Penang with instructions to deliver it to the person whose address was written on a slip of paper given to him by the said Mr. Ramiah. The said slip contained the address of "Mohammad Yaseen 244, Linghi Chetty Street. Madras-1." In pursuance of this information the said premises were also searched. The search resulted in a further seizure of

(1) 100 wrist watches found concealed among cut pieces of leather and kept in a basket in the store-room ; (2) a leather-suit case identical to the one seized from Ramaswamy and also having a hidden bottom ; (3) certain documents which, according to the Customs authorities, incriminated the petitioner ; and (4) Indian

currency amounting to Rs. 7,930.00.

These items are alleged to have been recovered from a portion of the building occupied by the petitioner. The petitioner, who is said to be the main tenant in the building, was not available during the search and for some time thereafter. One Shri S, N. Mohammad Yaseen was also in occupation of a room in the said building. The petitioner is alleged to have made a statement that he used to receive watches from the passengers from Malaya and sell them for small commission. He also admitted that he knew Shri S. N. Mohammed Yaseen for four or five years and that the latter had been staying with him for about 25 days prior to the s"izure. In reply to the show cause notice the petitioner denied the recovery from a portion of the building in his occupation but admitted the ownership of the leather suit-case as well as the currency notes. The Collector of Customs, Madras, by his order dated 9th May, 1959, directed the confiscation inter alias of the 100 wrist watches seized from the petitioner and also imposed a personal penalty of Rs. 10,000.00 on him. The personal penalty was imposed on the ground that the petitioner was a person directly and actively concerned in the offence of the illegal importation of the said 100 watches into the country. The Collector of Customs appears to have found against the petitioner as being the ''person concerned'' on the basis of- (i) his statement; (ii) the similarity between the bags of Ramaswamy and the petitioner both of which had false bottoms ; (iii) recovery of the said suit-case from the possession uf the petitioner ; (iv) recovery of 100 smuggled watches which, according to the Collector of Customs, were seized from the petitioner''s possession ; (v) recovery of the slip from Ramaswamy giving the address of the petitioner''s building and also containing the name of Shri S.N. Mohammed Yaseen; and (vi) association of Shri S. N. Mohammed Yaseen and the petitioner coupled with the latter''s admission that Mohammed Yaseen had been staying with him for about 25 days before the date of search. The petitioner aggrieved by the order of the Collector filed an appeal before the Central Board of Revenue which was dismissed by order dated 30th July, 1960. Besides the above factors mentioned by me the Central Board of Revenue took note of the following further facts- (1) The account-books seized from the petitioner clearly showed that he had many past transactions in smuggled goods with Shri Yaseen; (-) The petitioner had failed to explain many of the account entries; (3) The materials on the re cord showed that the petitioner had received other smuggled watches from Yaseen and other smugglers.

(2) Mr. Chadha, the learned counsel for the petitioner, says that the above facts do not load to an inference that the petitioner was a "person concerned" in the smuggling of watches. He has relied on Radha Kishan Bhatia v. The Union of India. In that case their Lordships of the Supreme Court interpreted the words ''concerned in any such offence'' in the following words-

"The requirements of the expression ''concerned in any such offence'' in the penalty part of section 167(8) are that the person to be penalised must be interested or involved or engaged or mixed up in the commission of the offence referred to in the first column of section 167(8). The interest or the involvement or the engagement or the mixing up of the appellant in the commission of the offence must be. at a stage prior to the completion of the offence of illegal importation of gold in the country." The above mentioned facts relied upon by the Collector and the Central Board of Revenue could legitimately lead the authorities to the conclusion that the petitioner was interested or involved or engaged or mixed up in the commission of the offence. In that situation it is not possible for me, while exercising powers under Article 226 to the Constitution, to review that decision.

(3) Mr. Chadha then argued that the Central Board of Revenue did not give reasons for its decision. I do not agree. The Central Board of Revenue considered the material on the record and mentioned the facts from which the conclusion had been drawn. Mr. Chadha also made a grievance about the omission by the Central Board of Revenue to give a personal hearing to the petitioner. That dues not necessarily violate the principles of natural justice. It is immaterial whether an appellant is audibly heard by the Central Board of Revenue or heard through the medium of materials on the record. All that is expected of the Central Board of Revenue is to give a hearing to the appellant and that has been done. Mr. Chadha''s last complaint was about an observation at the top of the order by the Central Board of Revenue reading-

"Read also the Collector''s report and the records of the case." Mr. Chadha says that the Collector''s report was never shown to the petitioner. I asked him whether he had made any grievance about this fact in his revision before the Central Government .He was unable to show that he did so. That disentitles Mr. Chadha to raise this question before me for the first time.

(4) In these circumstances, this petition must fail and is dismissed with no order as to costs.

(5) Before parting with this case I do wish to emphasize that generally the records of the cases are not made available to this Court by the Government. The Government must appreciate that it is impossible to do justice unless the records are provided, and that it is the duty of the Government to send the records where a writ of certiorari has been asked for. This indifference by the Government has very often caused considerable delay and inconvenience to this