(1959) 03 KL CK 0031

In the High Court Of Kerala

Case No : O.P. No''s. 649 and 464 of 1958

Narayanan Nair APPELLANT

Vs

Deputy Supdt. of Central Excise, Ernakulam RESPONDENT

Date of Decision : 20-03-1959

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1959) KLJ 584

Hon'ble Judges : N. Varadaraja Iyengar, J

Bench : Single Bench

Advocate : M.T. Paikaday and C.M. Kuruvilla in O.P. 649/58, for the Appellant; V. Rama Shenoi and R. Raya Shenoi in O.P. 464/58, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Iyengar, J.—These two petitions are under Art. 226 of the Constitution. They are filed by two separate owners of two motor vehicles which had been seized by the Respondents, Officers of the Central Excise, while being used for conveying stranger''s contraband goods and since then been detained by them without report to criminal court. The common question is raised whether such continued detention is warranted by law. In O.P. 464 of 1958 four bags of contraband coffee seeds belonging to a stranger were being conveyed in the petitioner''s car at about 4.15 a.m. on 14-7-1958 at a place about a mile south of Erattupetta. The car was stopped and searched by the Respondent Deputy Superintendent of Central Excise, Muvattupuzha and thereafter the goods and the car were taken by him to the Customs Office at Muvattupuzha. On the Petitioner''s request for release of the car unconditionally, Respondent objected saying that it was required in connection with further proceedings to be taken by his superiors in respect of the illicit transport. At the same time he offered to release the car on sufficient security for production whenever required at the instance of the superiors. It was the case of the Petitioner however that no lawful proceedings could be taken against the car, unless through competent Magistrate and the detention was therefore unlawful. It may be mentioned that soon after this O.P. was filed, this court passed orders for the release of the car on bond for production executed by the Petitioner before the Subordinate Judge''s Court at Ernakulam.

2. In O.P. 649 of 1958 the petitioner''s jeep was detected while conveying five bags of cured coffee of stranger in respect of which duty had not been paid. The jeep was stopped at Changanacherry on 2-10-1958 by the respondent, Deputy Superintendent of Central Excise, Mundakayam and the jeep and the goods were seized and taken to the Kottayam Customs Office. On the application of the Petitioner for release of the car on 4-10-1958 the reply was given by the Superintendent of Excision 10-10-1958 (after this O.P. was filed) that the car stood registered in the name of a stranger (claimed by the Petitioner to be his minor son) and so petitioner should furnish a bond and certain security as a preliminary condition. It would appear that petitioner subsequently executed the bond called for and obtained release of the vehicle on 3-11-1958.

3. Now section 9 of the Central Excise and Salt Act, 1944, hereinafter called the Act, constitutes the evasion of the payment of duty payable under the Act or the abetment thereof, among others as an offence. Section 10 then provides for powers of courts to order forfeitures as follows :

S. 10. Any Court trying an offence under this Chapter may order the forfeiture to (Government) of any goods in respect of which the Court is satisfied that an offence under this Chapter has been committed, and may also order the forfeiture of any receptacles, packages, or coverings in which such goods are contained and the animals, vehicles, vessels or other conveyances used in carrying goods, and any implements or machinery used in the manufacture of the goods.

Learned counsel for the petitioner says that section 10 above extracted is the only provision by which the car or jeep engaged in conveyance of contraband goods may be made liable by way of forfeiture, and he contrasted the case of conveyance used for transport by sea where confiscation was possible at the hands of officers of the Department (i.e.) apart from action through court. And he refers to section 28 as follows:

S. 28(1) Every vessel (including all appurtenances) in which any excisable goods are carried so as to render the owner or master of such vessel liable to penalties imposed by section 24, the cargo on board such vessel and the excisable goods in respect of which an offence under this Act has been committed shall be liable to confiscation on the orders of the officer empowered in this behalf by the Central Government.

4. Learned counsel for the Respondent however submits that the provision in section 10 is not exhaustive of the machinery set up under the Act and Rules for action against the offending conveyances by land by way of confiscation and he referred to sections 33 and 34:

S. 33. Where by the rules made under this Act, anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged.

The limit of powers of particular sets of officers with the details of which we are not concerned are then indicated.

S. 34. Whenever confiscation is adjudged under this Act or the rules made thereunder, the officer adjudging it shall give the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit.

Learned counsel then referred to Rule 215 which occurs under Chapter XII of the Rules dealing with Penalties, Confiscations and Appeals and deals specifically with the application of certain provisions of the Sea Customs Act, 1878.

R. 215. The provisions of sections 168, 189 and 192 of the Sea Customs Act, 1853 shall mutatis mutandis be applicable (to any decision or order relating to any duty, fine or penalty leviable in respect of any goods under the Act) or under these rules.

Section 168 of the Sea Customs Act referred to above runs as follows:

S. 168. Packages and contents included in confiscation of goods. The confiscation of any goods under this Act includes any package in which they are found, and all the other contents thereof.

Also conveyances and animals used in removal.-Every vessel, cart or other means of conveyance, and every horse or other animals, used in the removal of any goods liable to confiscation under this Act shall in like manner be liable to confiscation.

Tackle, etc. included in confiscation of vessels.-The confiscation of any vessel under this Act includes her tackle, apparel and furniture.

The argument of learned counsel for the respondent is that just as u/s 168 of the Sea Customs Act, the liability to confiscation of goods involves also the liability of the conveyances (whether by land or sea) used in the transport to similar confiscation; a decision or order under the Act or Rules relating to duty, fine or penalty to the extent it may provide for confiscation of goods may also (by virtue of Rule 215 of the Act read with section 168 of the Sea Customs Act) provide for confiscation of the conveyances used in the transport of those goods. I think this argument is entitled to acceptance.

5. Learned counsel for the petitioners says that the 2nd paragraph of section 168 of the Sea Customs Act incorporated by references as above does not, unlike the 1st paragraph, as regards packages, make the conveyance included in the conception of goods. Accordingly he says the conveyance has always to be viewed apart from goods and to the extent the Act does not contemplate the liability to confiscation of the conveyance (on land), as such, the 2nd paragraph is not attracted at all in the application of the Act or the Rules under it. But this is

really to misunderstand the position. The question is not whether liability to confiscation is already provided under the Act. It is rather whether the liability to confiscation of goods is provided for in particular case under the Sea Customs Act. If so the similar liability is rested on the conveyances taking the goods, Rule 215 serves to incorporate this concept of conjoint liability under the Act.

6. The question then is whether the Rules under the Act contemplate confiscation of the offending goods as part of an order or decision relating to penalty in this case. For, if they do, the confiscation of the conveyance engaged in the transport of such goods will come in for imposition u/s 33. Rule 9 or 33 will apply according to the coffee seeds here are taken to be cured and uncured goods and both these Rules provide for the liability of the goods to confiscation and there is also the residuary Rule 210 which says:

R. 210. A breach of these Rules shall, where no other penalty is provided herein, be punishable with a penalty which may extent to one thousand rupees and with confiscation of the goods in respect of which the offence is committed.

It must follow that the vehicles of the Petitioners in which the offending goods were conveyed may also be liable to confiscation u/s 33. And if the vehicles are liable to confiscation, section 179 of the Sea Customs Act made applicable under Rule 209 provides:

S. 179. All things seized on the ground that they are liable to confiscation under this Act shall, as soon as conveniently may be delivered into the care of any Customs Officer authorised to receive the same.

If there be no such officer at hand, all such things shall be carried to and deposited at the customs house nearest to the place of seizure.

If there be no customs house within a convenient distance, such things shall be deposited at the nearest place appointed by the Chief Customs Officer for the deposit of things so seized.

That is to say the procedure adopted by the Respondent cannot be said to be unwarranted.

7. Learned counsel for the petitioners finally says that in the absence of specific provision in the Act itself for confiscation of conveyances other than those involved in sea carriage, Rule 215 to the extent it incorporates by reference the provisions of the Sea Customs Act relating to confiscation of conveyances, must be held to be ultra vires. But this is to forget section 38 of the Act which provides:

S. 38. All rules made and notifications issued under this Act shall be made and issued by publication in the official Gazette. All such rules and notifications shall thereupon have effect as if enacted in this Act."

And it is not denied that the Rules had, after they were made, been laid before Parliament as required by the proviso to the section. As laid down by Lord Herschell in Institute of Patent Agents v. Lockwood (1894) A.C. 347:

"the effect of these words was to make the subordinate legislation as completely exempt from judicial review as the statute itself.

The Herschell rule as above has no doubt been questioned by Lord Dunedin in Yaffe''s case (1931) A.C. 494 and Sir W. Graham-Harrison in his Notes on Delegated legislation p. 66. But those criticisms do not affect this case where the Rules are no way inconsistent with the Act. I therefore hold that the respondent was not unjustified in the detaining of the motor vehicles herein as alleged.

8. It only remains to say that it will be open to the respondent without more to avail himself of the bond executed by the petitioner in O.P. 464 before the Subordinate Judge of Ernakulam as per interlocutory order of this Court. The executants of this bond will be bound to produce the motor car concerned at the direction of the respondent in connection with the further action to be taken by him or his superiors under the Act and Rules. In the result, subject to the above direction, the petitions fail and are dismissed. There will be no order for costs however in the circumstances.

