
(1976) 12 DEL CK 0003

In the Delhi High Court

Case No : Civil Writ Appeal No. 1235 of 1974

Nvishwaath Khanna

APPELLANT

Vs

Collector of Central Excise and Another

RESPONDENT

Date of Decision : 15-12-1976

Acts Referred:

Citation : (1977) ILR Delhi 569 : (1977) RLR 141

Hon'ble Judges : V.S. Deshpande, J;B.C. Misra, J

Bench : Division Bench

Advocate : N.C. Chawla, Harish Chandra and Anil Bhatnagar, for the Appellant;

Judgement

B.C. Misra, J.

(1) This writ petition has been filed under Articles 226/227 of the Constitution for an appropriate writ quashing the order of extension of period for issuing show cause notice issued on 12th September, 1974 by Mr. M. S. Mehta, Collector of Customs & Central Excise.

(2) The material facts of the case lie in a narrow compass. The petitioner is a citizen of India and resident of New Delhi. He obtained a passport issued at Kuwait on 26th August, 1971 and travelled from Delhi to Bangkok on 21st December, 1973 and returned to India and landed at Palam Airport on 3rd January, 1974 by Lufthansa flight. On arrival at Airport he presented himself for Customs clearance. His accompanied baggages consisted of four packages including a hand-bag. He also declared that he was expecting some other unaccompanied baggage and on his declaration landing certificate was granted to him. On the same date two unaccompanied packages arrived at the Palam Airport from Hongkong booked on 2nd January, 1974 ; and other two packages arrived on 4th January, 1974 which were also booked on 2nd January, 1974. All these four packages received in Delhi were sent by Vishwa Nath and consigned to "self." They were made over to the Customs Department, who called upon the petitioner to obtain the release of the packages. But the petitioner did not appear

in spite of being summoned, until about two months" later on 15th March, 1974 when he appeared before the Superintendent of Customs and made a statement that he had misplaced the landing certificate and that the packages offered to him for delivery were not owned by him and he declined to have the packages examined in his presence. The packages turned out to contain some goods the import of which was prohibited. The result is that the petitioner had disowned any connection with the four packages in dispute and so he did not mind their confiscation, if necessary, but if he admitted himself to be associated with them, the question of imposition of penalty and his prosecution for the offence would have arisen prominently. On 12th September, 1974 the Collector passed the order (annexure F), which reads as follows :

"I pass this order u/s 110 of the Customs Act, 1962. 2. In this case Show Cause Notice was required to be issue on 15-9-1974. Notices were issued to the parties concerned, but nobody has turned up. I have gone through the facts placed before me by the department, I am satisfied that further extension of period for issuing Show Cause Notice is necessary for conducting further enquiries in this case. 3. I, Therefore, grant extension of time for issuing Show Cause Notice up to 15-1-1975".

The petitioner contends that this order has been passed by the Collector without hearing him and the same is, Therefore, illegal and contravenes the rule of law laid down by the Supreme Court in Assistant Collector of Customs Vs. Charan Das Malhotra, .

(3) At the time of admission, notice was issued to the respondents to show cause why the petition be not admitted and the respondents filed their counter affidavit to which the petitioner filed a rejoinder. Later on the petition was admitted and the parties indicated that they did not want to file any fresh pleadings and the ones already filed be taken on the record. Since the petitioner had also been prosecuted, an application was made to the Hon"ble Chief Justice for early hearing of the petition and so this has been listed for hearing before us.

(4) On behalf of the Collector, it has been contended that the petitioner disowned the four packages in dispute and the matter required investigation to establish the identity of the owner. Moreover, the Superintendent of Customs issued notice dated 7th September, 1974 (Annexure R-1) intimating that the Investigation Officer had made an application for extension of time for completing further enquiries and investigation in the case and if the petitioner herein had any objection to the grant of the extension he may appear before the Collector on 11th September, 1974 at 11.00 hours in his office room and make oral representation or send written objection personally or through an authorised agent; otherwise it would be presumed that the petitioner had no objection to the extension. In the counter affidavit it is asserted that this notice had been affixed on the notice board of the Custom House. The notice was also sent to the two Air Companies as well as the petitioner at his residential address on 10th September, 1974, but the house was found locked and the notice could not be

tendered to the petitioner and was affixed outside the house of the petitioner. Since nobody appeared and objected, the Collector passed the impugned order according to law. The petitioner in his rejoinder affidavit has denied the receipt of the said notice and he has attached a copy of the show-cause notice dated 10th September, 1975, which has been served on the petitioner which indicates the reasons and the grounds as to how it is sought to be established that the petitioner is really the owner of the packages in dispute and had imported them without a license or customs clearance permit in breach of the statutory rules and he was called upon to show cause as to why penal action be not taken against him.

(5) Section 110 of the Customs Act, 1962 reads as follows :

"(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods : Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods without the previous permission of such officer. (2) Where any 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 : Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by Collector of Customs for a period not exceeding six months. (3) The proper officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act. (4) The person from whose custody any documents are seized under sub-section (3) shall be entitled to make copies thereof or take extracts there from in the presence of an officer of customs."

Section 124 of the Act reads as follows :

"No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person- (a) 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; (b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and (c) is given a reasonable opportunity of being heard in the matter: Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral."

(6) A perusal of the statutory provision (s. 110) shows that ordinarily the case for confiscation of seized goods must be notified within a period of six months; otherwise the goods must be delivered to their possessor. A power has, however, been given to the appropriate authority to extend the period for issuing the show-cause notice. The statutory provision does, unlike S. 124, not in terms require

affording a hearing, before the period for making further enquiry is extended. The Supreme Court has, however, in *Assistant Collector of Customs Vs. Charan Das Malhotra*, , observed that the proviso to the second sub-section of section 110 contemplated some sort of enquiry and the Collector was expected not to pass extension orders mechanically or as a matter of routine but only on being satisfied that there existed facts which indicated that the investigation could not be completed for bona fide reasons within the time laid down in section 110(2) and that the extension of that period had become necessary and that the words "sufficient cause being shown" have been used in contradiction to "reason to believe" occurring in sub-section (1) of section 110 and that adequacy of the cause shown might not be a ground for such interference, but the enquiry to be held by the Collector had to be on facts. The court further observed in paragraph 16 that since the right to restoration of the goods in question had already accrued to the party from whom they were seized, he must have an opportunity of being heard in respect of extension of time. Finally, the court observed in paragraph 17 that the power under the proviso mentioned above was quasi-judicial, or at any rate, one requiring a judicial approach and consequently an opportunity of being heard ought to have been given to the party before orders for extension were made.

(7) In the case before the Supreme Court, the party did not disclaim the ownership of the goods and was claiming their delivery and so on the expiry of the period prescribed by the Act a vested right to restoration of the goods had already accrued. Under the circumstances the court found that an opportunity of being heard before the extension were granted must be afforded.

(8) The rule of law laid down by the Supreme Court is based on the principle of natural justice. The application of the principle depends upon the facts and circumstances of each case and constitution of the Tribunal and the rules governing the same (see *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, , *Suresh Koshy George Vs. University of Kerala and Others*, , *Shadi Lal Gupta Vs. State of Punjab*, and *Byrne and another v, Kinematograph Renters Society Ltd. & Others*(1958) 2 AII E.R. 579.

(9) In the instant case the petitioner had already appeared before the Customs Authorities on 15th March, 1974 in respect of the packages in dispute which he disowned and stated that they did not belong to him. The packages were, Therefore, seized. For this reason, on the showing of the petitioner himself he was not entitled to the return of the packages in dispute at all and really the petitioner did not feel any concern as to what should happen to the packages and whether or not they be confiscated or be delivered to some other person. He was, Therefore, least concerned with any extension of time for making further enquiries into the matter. No prejudice whatever has been caused to the petitioner in the instant case.

(10) Moreover, the counter-affidavit filed on behalf of the respondents shows that

the notice had, in fact been issued and served according to law. The notice (Annexure R 1) was issued on 7th September, 1974 for appearance on 11th September, 1974. The notice was sent to the two Airlines as well as the petitioner, but his house was found locked and so it could not be delivered, but it was pasted at the outer portion of the house. It was also put up on the notice board of the Customs House. It is also apparent from the record that notices had previously been sent to the petitioner for appearance before the Collector on four dates, namely, 8th, 19th, 27th February and 12th March, 1974. But he did not appear then and appeared only on 15th March, 1974. This would show that his address was correct but he normally avoided service. Hence service of the notice in this way is clearly justified by the provisions of the Customs Act, which prescribed the manner in which the notice is to be given. This formality has been completed and if the petitioner chooses not to accept service of the notice, he cannot be heard to blame the Customs Department and in our opinion the rule of law laid down by the Supreme Court in Assistant Collector of Customs Vs. Charan Das Malhotra, , has been substantially complied with.

(11) So far as the question of existence of the sufficient material before the Collector is concerned we find on the record the report of the Superintendent of Customs, dated 7th September, 1974 in which it is stated that the investigation had not been completed and so further time be allowed. The Collector allowed the application and extended the time. The extension of time has been proved to be fully justified on the material already available on record as well as the subsequent events brought to our notice. As noticed above, the petitioner had denied the ownership of the packages in dispute. The Customs authorities had, Therefore, to discover who the real owner was and the discovery of the owner from the whole wide world would naturally take more time than disposal of the case where the petitioner admits the ownership. Furthermore, the show cause notice eventually issued to the petitioner on 9th January, 1975 (annexure PI) shows that the matter was eventually investigated by the Superintendent Anti-Smuggling Unit and the statements of the witnesses were recorded in September, October and December, 1974; the packages were also re-examined and a shirt found inside the packages bore a distinctive laundry mark, the residential house of the petitioner in Greater Kailash was searched on the strength of the authorisation letter issued by the Collector and a shirt recovered from the residence of the petitioner tallied the distinctive laundry mark of the shirt recovered from the packages in dispute. As a result of the further investigation, which was necessary, the department was of the view that it was the petitioner who had imported the contraband articles contained in the packages in dispute and so a show cause notice was issued to him on 9th January, 1975 and it appears that his prosecution has also been ordered. The circumstances thus revealed amply justify the extension of time for concluding the investigations. We are, Therefore, of the opinion that the impugned order dated 12th September, 1974 (annexure F) by which the Collector extended the period for issuing the show cause notice to the petitioner which was necessary

for conducting further enquiry in the case and the impugned order does not suffer from any legal infirmity or any violation of the rule of natural justice and is certainly passed on sufficient material placed before the Collector.

(12) Accordingly, the contention of the petitioner fails and no sufficient ground has been shown for issuance of the writ. Consequently, the petition is dismissed with costs.