
(1976) 12 MP CK 0007
In the Madhya Pradesh High Court
Case No : M.P. No 32 of 1973

Pratap Rai

APPELLANT

Vs

Superintendent Central Excise, Jabalpur and others

RESPONDENT

Date of Decision : 19-12-1976

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 111(d), 112, 128, 128(2), 131

Citation : (1977) J LJ 441

Hon'ble Judges : J.S. Verma, J;G.P. Singh, J

Bench : Division Bench

Advocate : B.P. Athaya, for the Appellant; R.P. Sinha, for the Respondent

Final Decision : Allowed

Judgement

J.S. Verma, J.—By this petition under Article 226 of the Constitution, the petitioner seeks a suitable writ to quash the adjudication proceedings and de novo enquiry commenced by a fresh notice dated 13-12-1972 (Annexure-E) issued under the Customs Act, 1962 (here-in-after called the Act.)

2. On 27-2-1969, when the petitioner detrained at the Jabalpur railway-station from the Janata Express coming from Bombay, he was searched by officers of the Central Excise Department who recovered 23 wrist watches of foreign make from possession. This gave rise to adjudication proceedings against the petitioner commenced by a show cause notice dated 23-5-1969 (Annexure-A) issued by the Assistant Collector, Customs and Central Excise, Jabalpur (respondent No. 2). That proceeding ended by the order 30-6-1969 (Annexure-B) passed by the respondent No. 2 whereby all the watches were confiscated u/s 111 (d) of the Act on the ground that no duty had been paid thereon and a penalty of Rs. 250/- was imposed u/s 112 of the Act. The petitioner preferred an appeal to the Appellate Collector (respondent No. 3) u/s 128 of the Act u/s 128 (2) of the Act, by the order dated 22-7-1972 (Annexure-C), the respondent No. 3 set aside the order of adjudication (Annexure-B) passed by the respondent No. 3 without any

direction remanding the case for commencement of a de novo enquiry. Thereafter a fresh notice dated 27-7-1971 (Annexure-D) was issued to the petitioner by the respondent No. 1 for commencement of a de novo enquiry and the petitioners objection to the same having been rejected, the present petition has been filed substantially for the relief already stated.

3. The petitioner's case is that the order of respondent No. 3 passed in appeal u/s 128 (2) of the Act not having given any direction of remand permitting a fresh enquiry and the same having become final, the de novo enquiry and fresh proceedings for adjudication now commenced are without jurisdiction. In reply, the respondents contend that the direction of remand is implicit in the appellate order Annexure-C wherein the expression "without prejudice" has been used.

4. The relevant portion of the appellate order (Annexure-C) is as follows :--

The adjudication, therefore, suffers for lack of principle of natural justice, in as much as adequate opportunities were not given to the appellant to defend his case. I, therefore, without prejudice, vacate the order of the adjudication passed by the Assistant Collector, Central Excise. Jabalpur.

There can be no doubt that there is no express direction of remand given in the appellate order permitting the initiation of fresh adjudication proceeding after the earlier order of adjudication passed by respondent No. 2 had been set aside in appeal, vide order Annexure-C. The case of the respondents is that the use of the expression "without prejudice" in the relevant portion of the order quoted above implies such a remand. We are unable to accept this argument because that would require importing certain words in the appellate order which are admittedly not there. Mere use of the expression "without prejudice" does not lead to the implication suggested on behalf of the respondent. In *The Collector of Central Excise Vs. V.K. Palappa Nadar*, ; the expression "without prejudice to the merits of the case" used in a similar order made by the appellate authority u/s 35 of the Central Excises and Salt Act, 1944, was not construed as implying a direction of remand and it was held that the expression only meant that the appellate authority had not gone into the merits of the case and had disposed of the matter on a preliminary ground. That decision of the Madras High court was followed in *The Marsdan Spg. and C Ltd. v. Shri L.V. Pol and others* ILR 1965 Guj. 240 by a Division Bench of that Court under similar circumstances, we find no reason to construe the expression "without prejudice" occurring in the appellate order Annexure-C in the present case in a different manner. The principle enunciated in both these decisions was summarised by a Division Bench of this Court in *Universal Cables Ltd. v. Union of India and others* Misc. Pet. No. 1571 of 1975, decided on 14-9-1976; as follows: --

The ratio of these two cases, which are similar, is that when a proceeding is terminated by an appellate order, the same proceeding cannot be restarted by the original authority in the absence of remand.

The effect of finality attaching to an appellate order made u/s 35 of the Central

Excises and Salt Act, 1944, is undoubtedly of this kind. In our opinion, the effect of an appellate order made u/s 128 (2) of the Customs Act, 1962 is the same. Under sub-section (2) of section 128 of the Customs Act, the appellate authority has very wide powers of making such order as it thinks fit, confirming, modifying or annulling the decision or order appealed against. The provisions also empower the appellate authority to make such further enquiry as may be necessary before making the final order in the appeal. Thus, the power of the appellate authority is conferred in the widest terms. Section 131 provides for a revision by the Central Government on an application of any person aggrieved by any order passed u/s 128. The Central Government also has suo motu power of revision to annul or modify any order passed u/s 128. The scheme of the Act clearly shows that an appellate order made u/s 128 of the Customs Act attains a finality subject only to the Central Government's revisional powers conferred by section 131 of the Act. The result is that an appellate order made u/s 128 of the Customs Act attains finality in the same manner as does the appellate order u/s 35 of the Central Excises and Salt Act, 1944. It follows necessarily that the original authority under the Customs Act cannot recommence the same proceeding in the absence of a remand by the appellate authority made while setting aside the order of the original authority in appeal.

5. In the present case, there was no direction of remand contained in the appellate order Annexure--C and the adjudication proceeding ending with the order Annexure--B made by the respondent No. 2 was set aside u/s 128(2) of the Customs Act. The necessary consequence was that the authorities had no jurisdiction thereafter to commence fresh adjudication proceedings de novo after the appellate order by issuing a fresh notice Annexure-D, dated 27-7-1972.

6. Consequent, this petition succeeds and the fresh notice Annexure-D, dated 27-7-1972 issued by respondent No. 1, as also the fresh adjudication proceedings commenced on that basis are quashed, this does not; however, effect the criminal prosecution pending against the petitioner and we express no opinion in that respect since the claim in this petition was confined at the hearing only to quashing the fresh adjudication proceedings. In the circumstances of the case, parties shall bear their own costs. The amount of security deposit shall be refunded to the petitioner.