
(1996) 12 MAD CK 0089
In the Madras High Court
Case No : Writ Petition No. 820 of 1996

R. Karuppan

APPELLANT

Vs

R. Namachivayam

RESPONDENT

Date of Decision : 24-12-1996

Acts Referred:

Arms Act, 1959 — Section 10
Constitution of India, 1950 — Article 12, 14, 226
Customs Act, 1962 — Section 11, 111, 112, 124, 125
Foreign Trade (Development and Regulation) Act, 1992 — Section 11, 2, 3, 5

Citation : (1998) 99 ELT 214

Hon'ble Judges : K.A. Swami, J;A.R. Lakshmanan, J

Bench : Division Bench

Advocate : Shri R. Karwppiah, for the Appellant; Shri V.T. Gopalan, Sr. CG (SC) assisted by Ramakrishan Reddy, Addl. CG (SC), for the Respondent

Judgement

A.R. Lakshmanan, J.—This writ appeal is directed against the order passed by Kanakraj, J., in W.P. No. 3870/96, dated 16-8-1996 : dismissing the writ petition which is filed for issuing a writ of Certicrarified Mandamus calling for the records relating to the order passed in proceedings No. O.S. 377/96, dated 18-3-1996 and to quash the same and further direct the respondents to release the weapons, and direct the payment of costs and punitive damages to the tune of Rs. 5 lakhs.

2. The order dated 18-3-1996 which is sought to be quashed is an order holding that the five fire arms brought by the appellant from London are not entitled to the benefit of the Customs Notification 146/94, that the value of the fire arms was Rs. 4,02,379/- and that the Fire Arms had been imported without valid import licence, in contravention of the provisions of Foreign Trade (Development and Regulations) Act, 1992 and was liable for absolute confiscation u/s 111(d) of the Customs Act, 1992. A further penalty of Rs. 10,000/- was imposed u/s 112(a) of the Customs Act.

3. The show cause notice u/s 124 of the Customs Act, 1962, dated 8-2-1996 was issued to the appellant who brought the following five Nos. Fire Arms along with him as accompanied baggage on 31-1-1996 from London :

Make	Description	-	S.	No.	of	the	arm
BERETTA	Over Under Shotgun S/N L 75976 B	2.	12	Bore	BERETTA	Over Under Shotgun S/N H 06253 B	3.
BERETTA	Over Under Shotgun S/N H 06681 B	4.	12	Bore	BERETTA	Over Under Shotgun S/N H 04409 B	5.
BRNO	Rifle NVM 56181						

Since the value of the goods was not known, and their import was not permissible under Baggage Rules, the goods brought by the appellant the same were detained under D.R. No. 107139, dated 31-1-1996. The appellant in his letter dated 5-2-1996 addressed to the Addl. Commissioner of Customs has inter alia claimed that as per office order dated 13-7-1993, issued by the Department of Youth Affairs and Sports, Ministry of Human Resources Development, Govt. of India, these fire arms in question can be imported without import duty and without import licence. The appellant claims that the Fire Arms imported by him are exempted from the provisions of the Import Policy and therefore, they can be imported as such without any import licence/Customs clearance permit. The appellant also claimed that the said Arms are exempted from payment of duty in terms of Notification No. 255, dated 23-10-1989. Alternatively, the goods are entitled to concessional rate of duty at 50% in terms of Notification No. 146/94 and accordingly, has requested for the clearance of the goods in terms of the above Notification No. 146/94. The appellant has also stated that the goods have been gifted to him and therefore, he is not in a position to indicate the actual value.

4. According to the Department, the import of the goods without a valid import licence is liable for confiscation u/s 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 111(d) of the Customs Act, 1962 and that the appellant has not produced the valid arms licence issued by the police authorities in terms of the provisions of the Arms Act, 1959 and therefore the arms imported in contravention of Section 10 of the Arms Act and also without import licence are liable for confiscation u/s 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 111(d) of the Customs Act. He was called upon to show cause to the Deputy Commissioner of Customs, Airport, Madras as to why (i) the value of the 5 Nos. Fire Arms described in the show cause notice should not be fixed at Rs. 4,02,379/- under Rule 8 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988; (ii) why the fire arms described in this show cause notice should not be confiscated u/s 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 10 of the Arms Act, 1959 and Section 111(d) of the Customs Act, 1962; and (iii) why penalty should not be imposed on him u/s 112

of the Customs Act, 1962 for having rendered the goods liable for confiscation u/s 111(d) of the Customs Act, 1962. The appellant was asked to submit his reply with 15 days from the date of receipt of show cause notice.

5. The appellant sent a reply to the show cause notice on 19-2-1996 which was received by the Department on 20-2-1996. The Deputy Commissioner of Customs (Airport) Madras by Order No. O.S. 377/96-Air, dated 18-3-1996 passed the impugned order. The Deputy Commissioner of Customs formulated four points for the decision which are listed below :

1. Whether the subject goods can be cleared without a valid import licence, in terms of the present Import-Export Policy;
2. Whether the subject goods are exempted from payment of Customs Duty;
3. Whether the valuation proposed in the show cause notice can be adopted; and
4. Whether Shri Karuppan is liable for any personal penalty.

On point No. 1 it has been held that the import of fire arms even by renowned shooters requires an import licence in terms of the Import-Export Policy and import of fire arms even as accompanied baggage requires a licence and import of fire arms of Baggage Rules. On point No. 2, it has been held that the claim made by the appellant that the goods are exempted from payment of duty is not sustainable and he is not entitled for the benefit of Notification No. 146/94 as claimed by him. On point No. 3, since the appellant has not declared the value of the goods, the department after making market enquiries and after ascertaining it from the price catalogues, proposed to adopt the value in terms of Rule 8 of the Customs, Valuation (Determination of Prices of Imported Goods) Rules, 1988 as detailed in the show cause notice. In the absence of a transaction value and the appellant giving any acceptable documentary evidence to arrive at the valuation of the goods, it is stated that the Department was left with no other option but to make market enquiries, and arrive at the price from the catalogues wherein the prices are clearly indicated for the relevant goods. Therefore, on point No. 3 it has been held that the prices indicated in the show cause notice is correct, fair and reasonable and therefore, he is inclined to uphold the same. On point No. 4, since the appellant had imported the Arms without valid import licence, and has thus violated the provisions of Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 and thereby rendered the goods liable for confiscation u/s 111(d) of the Customs Act, 1962 apart from the confiscation of the goods, he is liable for penalty in terms of Section 112(a) of the Customs Act, 1962. However, considering the fact that the appellant has declared the goods on arrival, on taking a lenient view, the Deputy Commissioner of Customs has imposed a penalty of Rs. 10,000/- only u/s 111(d) of the Customs Act, 1962. Aggrieved by the said order, the petitioner/appellant has filed W.P. No. 3870 of 1996 questioning the order on various grounds.

6. According to the appellant, the first respondent had absolutely no justification

for detaining the weapons which was voluntarily deposited as evident from the endorsement made in the detention receipt and on production of the arms licence on 3-2-1995, the authorities ought to have released the weapons. It was further contended that the adjudicating authority has erred in passing the impugned order, whereas the statutory baggage rules do permit import of fire arms as accompanied baggage and that the order is the culmination of the improper exercise of the power, inasmuch as for the adjudicating authority did not consider the past practice of clearing the guns without import licence which had been approved by the Finance Ministry, Customs Board and at the Tariff Conference. The appellant also filed an interim application for an interim direction directing the respondents to release all the guns to the appellant covered by the voluntary Detention Receipt Number 107189, dated 31-1-1996 pending disposal of the writ petition.

7. Mr. P. Namasivayam, the Assistant Commissioner of Customs, Airport, Madras (1st respondent) filed a counter affidavit denying the allegations. In para 10, he has stated that beyond making the order of valuation and sending the same for valuation to the Air Cargo Complex and getting clarification from the Joint Director General, Foreign Trade, Madras as to the requirements of Import Licence for fire arms, he had nothing to do with the appellant's case and all other averments relating to him to the contrary are false and false to the knowledge of the appellant. He has further stated that he has only discharged his duties in accordance with law and the same not having found favour with the petitioner, he has indulged in villification which are wholly not true.

8. The 2nd respondent K. Umesh filed a separate counter affidavit denying the allegations. He stated that he has issued the show cause notice to the appellant on the direction of the 3rd respondent.

9. The 3rd respondent Mr. M. Veeraiyan filed a counter affidavit denying the averments in paras 7 and 8 of the affidavit and counter of the 4th respondent directing him to release the guns on levy of duty and redemption fine. He also denied the other allegations made against him.

10. Mr. S. Senthilvel, the 4th respondent filed a separate counter affidavit denying the allegations as untrue. He also denied that the alleged incident took place at his instance and he extended due courtesy to the appellant meeting him and hearing him after office hours even without prior appointment and that the above abuse is the reward for the courtesy extended to the appellant.

11. The 5th respondent Mrs. Girija Muthangi filed a separate counter affidavit denying the allegations. She has stated in para 5 that the appellant has consistently tried to pressurise her in order to have the arms imported by him released without adjudication. Finding that he could not succeed in his attempts, the appellant has deliberately misquoted her and made false allegations regarding her treatment to him which this Court may not be pleased either to countenance or condone.

12. Mr. S. Sudarsan, Asstt. Commissioner of Customs (Legal Section) filed a separate counter affidavit on behalf of the respondents meeting the points on merits raised by the petitioner in his affidavit. It is stated in his counter that the earlier order releasing the baggage cannot be relied upon as a precedent which would control the decision in the case of the present import made by the appellant. It is stated that the import of fire arms is not permitted under Baggage Rules and fire arms are specifically excluded from the purview of Rule 5 of the Baggage Rules.

13. A common reply affidavit was filed by the appellant. It is also stated in the counter of the respondents to the additional affidavit that unless and until an order of confiscation is set aside, the question of release of the goods will not arise particularly when an efficacious alternative remedy is provided in law.

14. Before the learned Single Judge, the maintainability of the writ petition without exhausting the alternative remedy was raised. However, the learned Single Judge allowed both the parties to argue the case both on the maintainability and also on the merits of the case. The learned Judge, on consideration of the entire materials placed before him and the arguments of the counsel appearing on either side, rejected the contention of the appellant that the earlier clearance will bind the authorities while ordering the release under the current Rules and Regulations and also rejected the decision cited by the appellant regarding the binding nature of the earlier clearance as irrelevant, because they related to the decision of higher authorities binding on the lower authorities when they deal with the identical matters and identical regulations. Such contention of the appellant was also not countenanced by the learned Single Judge in view of the decisions reported in Chandigarh Administration and another Vs. Jagjit Singh and another, . Harpal Kaur Chahah (Smt) v. Director, Punjab Instructions and Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others, . Learned Single Judge also held that the current Rules do not permit the appellant to import weapons without a valid licence and therefore, there is no question of permitting the appellant on any other ground like past practice. Learned Single Judge after examining the Rules and Regulations cited by the respondent, held that the order of confiscation passed against the appellant is justified. Even though the learned Single Judge held that the writ petition was maintainable, he was unable to give any relief to the appellant because of the legal provisions referred to in his judgment which clearly prohibit the import of fire arms except in accordance with a licence or customs clearance permit. In view of the findings as above, the learned Single Judge held that there is no question of permitting the appellant to have payment of compensation or compensatory costs.

15. Affrieved against the order of the learned Single Judge, the appellant filed the above writ appeal.

16. We directed the learned Senior Central Govt. Standing Counsel Mr. V. T. Gopalan to appear on behalf of the respondents and apprise us the correct legal

position and the procedures to be followed in matters like this with reference to the Export and Import Policy. Accordingly arguments were heard, from both the sides. Mr. Karuppan the appellant herein, who is also a member of the Bar argued this matter as party in person, and made lengthy submissions on facts and also on the questions of law, which are countered by Mr. V. T. Gopalan, learned Senior Central Govt. Standing Counsel, ably assisted by Mr. Ramakrishna Reddy, Addl. Central Govt. Standing Counsel.

17. Mr. Karuppan, claims that he is a sports person of outstanding eminence and that he was adjudged as a renowned shooter enabling him for importing shooting gear like guns etc., on concessional rate of duty and he imported shooting gears availing the concession accorded by the Government India and for the sake of battering his shooting skills. He had imported 2 guns and 5,000 rounds of ammunitions as baggage in 1991. The then Addl. Collector took a view that the guns cannot be imported without the import licence and detained the same. The matter was referred to his immediate superior the Principal Collector of Customs who ruled that the statutory baggage rules did permit import of fire arms as baggage, directed the release of the said guns and ammunition against levy of 240% of duty. Aggrieved by the said order, then Addl. Collector who detained the fire arms referred the matter to the Customs Board. The appellant aggrieved by the levy of 240% duty instead of concessional rate of duty at 35% appealed to the Finance Ministry. The Finance Ministry and the Customs Board approved the clearance of the fire arms and ammunition as baggage and held that the appellant's import by baggage would attract only 35% duty and directed the excess collection of duty. Since then, in accordance with the said decision, thrice guns and several times ammunitions were imported as baggage and unaccompanied baggage and were cleared against payment of concessional rate of duty. Mr. Karuppan says that the directions issued by the Customs Board was pursuant to statutory powers u/s 129D of the Customs Act. Therefore, he submits that the guns imported by him should be clear without import licence and on payment of concessional duty.

18. It is submitted by Mr. Karuppan that on landing he declared the guns to the Assistant Commissioner and made a voluntary deposit of his fire arms as he had lost all the 8 original fire arms licence issued by the local Police, and the customs notification etc., at the Frankfurt Airport, offering to seek their clearance the next day against production of the duplicate licence which was under preparation at the Commissioner's office at Madras. On 2-2-1996 the appellant requested the respondents to release the fire arms on the basis of the duplicate licence issued by the police. According to the appellant, the Addl. Commissioner delayed the release. He then contacted the Collector of Customs who directed the provisional release of the fire arms u/s 18 of the Customs Act and infuriated by the appellant contacting the 4th respondent, the first respondent invented a new reason stating that fire arms can be imported only against an import licence. The Commissioner was informed about the position that the 1st and 3rd respondent taking a view that the earlier orders are not binding on them and that for import

of fire arms as baggage, import licence is a must. To facilitate immediate clearance, the petitioner sought the clearance of fire arms against payment of duty and redemption fine under protest. The appellant even referred to the standing practice of the Customs in accordance with the standing orders of the Central Government clearing fire arms imported as gift by post parcel though prohibited by the policy conditions against levy of duty and redemption fine.

19. It is submitted that as per the order from the Sports Ministry and the Customs Notification, the sports persons of outstanding eminence of this country are entitled to import fire arms and ammunition duty free and without import licence while being in India and the Customs Notification No. 147/94 also laid down that a sports person of outstanding eminence was entitled to import fire arms duty free and without import licence. It is further submitted by the appellant that the 3rd respondent has declined to release the fire arms even on production of the office order from the Sports Ministry. While so, at the instance of the respondents, the 5th respondent issued a show cause notice initiating adjudication proceedings. The appellant contended that the adjudication process is without jurisdiction, for, the baggage rules permit the import of fire arms as baggage and following the same, he has cleared the guns and ammunition on many earlier occasions, which precludes the Department from initiating any adjudication proceedings. Since the order of confiscation is actuated by patent malice and wholly illegal, the appellant contended that he claimed compensation and exemplary costs. According to the appellant, the order of the learned Single Judge is incorrect, for, the customs officials had cleared the import of the appellant viz., clay targets used for target shooting and clay target launchers imported by the appellant as unaccompanied baggage and therefore, the said position runs counter to the practice hitherto in vogue and all statutory notifications that are in force.

20. The appellant further contended that the learned Single Judge has failed to consider that the adjudication order did not even consider that the earlier clearance was illegal, if it were to be so as required by the ratio of the decision of the Supreme Court reported in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , the impugned order and the order of the learned Single Judge have to be set aside. It is also stated that none of the respondents had even claimed that the earlier clearance approved by the Finance Ministry and the Customs Board was not binding on them and was illegal in the counter affidavits. They cannot plead so on grounds of estoppel and on the principle of natural justice. While so, the learned Single Judge has accepted the argument of the learned Senior Standing Counsel for the respondents and held that the earlier orders were illegal.

21. According to the appellant, Rule 34 of the Import and Export Policy for 1992-97 clearly exempts all items covered by the policy when imported as baggage. Furthermore, Foreign Trade (Exemption from Application of Rules in certain Cases) Order, 1993 clearly states that the import and export policy

restriction does not apply to items imported as baggage. In addition to the above, the Office Order of the Ministry of Sports and Youth Affairs and the Exemption Notification No. 39 clarifies that the guns can be imported as baggage by the renowned shooters against payment of 50% duty. The General Exemption Notification No. 38 dealing with imports by sports person of outstanding eminence states that such category of persons could import guns and ammunition duty free. When renowned shooters could import as baggage, still higher category viz., the eminent sports person cannot import as baggage cannot be countenanced. Fire arms and ammunition have also been specifically mentioned as items importable under the Baggage Rules.

22. The appellant next contended that the learned Single Judge has ignored a binding precedent of the Court that the voluntary declaration of goods are not liable for confiscation and levy of penalty. It is also submitted that the order has been passed by the learned Single Judge in violation of the mandatory Section 125 of the Customs Act without giving the appellant an option to redeem the goods against payment of fine. Therefore, the impugned order is not sustainable. The appellant also submitted that the respondents have not denied many of the vital allegations of the appellant rendering the appellant's case standing un rebutted based on the ratio of the Supreme Court in the decisions reported in *R.P. Kapur and Others Vs. Sardar Pratap Singh Kairon and Others*, ; *S. Pratap Singh Vs. The State of Punjab*, ; and *C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation*, . It is submitted that the appellant had lost the opportunity to take part in the National Championship and thereby lost his chance or taking part in Coaching Camp as well as five International Competitions and therefore, his prayer for exemplary costs and compensation should have been granted by the learned Single Judge following the decisions of the Supreme Court reported in *Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others*, and *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*, . He also contended that the order of the learned Single Judge is in conflict with the binding reasons of the Supreme Court laid down in the following cases regarding alternative remedy, reported in *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, ; *A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another*, ; *Carl Still G.M.B.H. and Another Vs. The State of Bihar and Others*, ; *Collector of Customs and Excise, Cochin and Others Vs. A.S. Bava*, ; *K.S. Papanna and Another Vs. Deputy Commercial Tax Officer and Others*, ; *Beharilal Shyamsunder Vs. Sales Tax Officer, Cui Circle, Cuttack and Another*, ; *The Collector of Customs, Madras Vs. K. Ganga Setty*, ; *S.R. Tewari Vs. District Board Agra and Another*, ; *Sales Tax Officer, Jodhpur and Another Vs. Shiv Ratan G. Mohatta*, ; *L. Hirday Narain Vs. Income Tax Officer, Bareilly*, ; *Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others*, ; *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, ; *Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others*, and AIR 1989 SC 2186.

23. Per contra, Mr. V. T. Gopalan, learned Senior Standing Counsel for the respondents made detailed submissions in regard to the various points urged by the appellant and refuted the incorrectness of the same.

24. First, we deal with the submission of Mr. V. T. Gopalan in regard to the alternative remedy. According to Mr. V. T. Gopalan, the reason given by the appellant in paragraph 29 of the affidavit filed in support of the writ petition for by-passing the alternative remedy cannot be countenanced. Therefore, the appellant, in the circumstances, should be directed to seek the alternative remedy. He invited our attention to the preamble of the order impugned in the writ petition viz., the order passed by the 5th respondent wherein it is stated that an appeal against that order lies to the Commissioner of Customs (Appeals), Custom House, Madras-1, within the months from the date of receipt of this order. The respondents have also raised an objection in paragraph 4 of the counter affidavit filed in the writ petition by the respondents. Mr. V. T. Gopalan learned Senior Standing Counsel, in support of his contention in regard to the maintainability of the writ petition cited the following decisions reported in *Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others*, ; *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, ; *Collector of Customs, Madras Vs. Madras Electro Castings P. Ltd.*, ; and *Medopharam Vs. Superintendent of Central Excise, Madras*, .

25. It is true that when an act provides for a complete machinery to challenge an order, it can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is also well recognised that where a right or liability is created by a statute, which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. As rightly pointed out by Mr. V. T. Gopalan, the appellant has a right to prefer an appeal before the Commissioner of Customs (Appeals), Madras-1, within three months from the date of receipt of the said order. This contention was also advanced before the learned Single Judge. The learned judge, however, admitted the writ petition and directed both parties to address arguments on the question of maintainability and also on merits. The learned Single Judge held that the writ petition without availing the alternative remedy available is maintainable for the reasons stated in his order. However, the learned judge rejected all other contentions raised by the appellant herein on merits.

26. When the writ appeal was moved before us by the appellant/party in person, we ordered notice to the respondents through their Standing Counsel. The learned Senior Standing Counsel for the respondents at the time of hearing raised the question of maintainability of the writ petition. The learned Senior Standing Counsel also cited the above mentioned case laws. The appellant has also cited the decisions mention supra in support of his contention.

27. Mr. V. T. Gopalan argued with vehemence that as there is an alternative remedy available to the appellant, he should be directed to approach the

appropriate authority under the Customs Act. Declining to entertain the writ petition under Art. 226 of the Constitution, when effective and efficacious alternative remedy is available to the petitioner, is no doubt a self-imposed restriction in order to ensure that the laws governing the subject and the remedies provided thereunder are followed and the same are not by passed by approaching the High Court under Art. 226 of the Constitution. In this case also, there was no difficulty whatsoever to direct the petitioner/appellant to avail the remedy of appeal but for his insistence that his fundamental right to pursue his avocation as a sports-man is affected by the impugned order of the authority and has caused great damage to him, and, therefore, he is also entitled to damages. We have only made an exception in hearing the case on merits, as, otherwise, it required to be thrown out on the preliminary objection by the respondents that the proper remedy for the petitioner/appellant is to avail the right of appeal. Therefore, we make it clear that our decision on the merits of the case shall not be construed as holding that in the normal course one can ignore the effective alternative remedy as provided under the concerned law and the jurisdiction of the High Court under Art. 226 of the Constitution can be invoked. We further make it clear that the decision shall not be treated as a precedent for similar cases. In view of this, we do not consider it necessary to refer in detail to the various decisions cited on both sides about the availing of the remedy under Art. 226 of the Constitution without availing the right of appeal.

28. The appellant and the learned Senior Standing Counsel for the respondents draw our attention to the relevant provisions of the Act and the Notifications issued by the Central Government from time to time. Section 3 of the Imports and Exports (Control) Act, 1947, since repealed and replaced by Section 5 of the Foreign Trade (Development and Regulation) Act, 1992, the Central Government had notified on 31-3-1992, the Export and Import Policy for the period 1992-97. The word "licence" is defined in Section 2(g) of that Act as "a licence to import and export and includes a customs clearance permit and any other permission issued or granted under this Act." The word "Licence" is also defined in para 7(21), Chapter III of the Export and Import Policy as "a licence granted under the Act". Para 34 of Chapter V of this book deals with "imports". The said para 34 reads thus :

"34. Import of Gifts. - Import of gifts shall be permitted according to the Baggage Rules for the time being in force. Import of goods which are other-wise freely importable under this Policy shall also be permitted as import of gifts without a Customs Clearance Permit (CCP). In any other case, Customs Clearance Permit (CCP) shall be required and may be issued, on "Application, by the licensing authority after considering the merits of the case".

Chapter I of the Foreign Trade (Development and Regulation) Act, 1992 deals with the power of the Central Government to make orders and announce the Export and Import Policy.

29. Section 3 of the Foreign Trade (Development and Regulation) Act, 1992,

deals with the power of Central Government to make provision relating to imports and exports, which reads thus :

3. (1) The Central Government may by order published in the Official Gazette, make provision for the development and regulation of foreign trade by facilitating imports and increasing exports.

(2) The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the order, the import or export of goods.

(3) All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited u/s 11 of the Customs Act, 1962 and all the provisions of that Act shall have effect accordingly."

30. Section 5 of that Act deals with export and import policy. It runs as follows :

"The Central Government may, from time to time, formulate and announce by notification in the Official Gazette, the export and import policy and may also, in the like manner, amend that policy."

31. Section 11, Chapter IV of that Act deals with contravention of the provisions of this Act, rules, orders and export and import policy. Any contravention of the Export and Import Policy attracts penalty u/s 11(2) of the Foreign Trade (Development and Regulation) Act, 1992, not exceeding one thousand rupees or five times the value of the goods in respect of which any contravention is made or attempted to be made, whichever is more. Thus, it is seen, that the requirements of the Export and Import Policy in this behalf are mandatory. Chapter 15 of the Export and Import Policy deals with the negative list of imports. Under this Chapter, the import of fire arms figures as Serial No. 3 of Part II (C) - Safety, Security and Related Items. It states that the import of fire arms is not permitted except against a licence by renowned shooters/Rifle Clubs for their own use on the recommendation of the Department of Youth Affairs and Sports, Government of India. Under Chapter 15, Part I, Prohibited items are dealt with. Under Part II of the said chapter, restricted items are dealt with.

32. In exercise of the powers conferred u/s 3 of the Imports and Exports (Control) Act, 1947, the Central Government notified on 31-3-1992, the Export and Import Policy for the period 1992-97. This Act has since been repealed and replaced by Foreign Trade (Development and Regulation) Act, 1992, Foreign Trade (Regulation) Rules, 1993 and the Foreign Trade (Exemption From Application of Rules in Certain Cases) Order, 1993.

33. Our attention was drawn to the procedure for imports as regards the import of arms and ammunition by renowned shooters as well as gifts of consumer of other goods, which are found in paras 54 and 56 of the Hand Book of Proceedings, Volume I for the period 1-4-1992 to 31-3-1997, issued by the

Ministry of Commerce, Government of India. Para 54 runs as follows :

"54. Import of Arms and Ammunition by Renowned Shooters. - Renowned shooters may be granted licences for import of arms and ammunition for their own use. An application may be made in the form given in Appendix VII to the Director General of Foreign Trade supported by the recommendation of the Department of Youth Affairs and Sports, Government of India. Import of arms and ammunition by renowned shooters as gifts may also be allowed under this provision. In case of gifts, a customs clearance permit may be issued."

Para 56 runs thus;

"56. Gifts of Consumer or other goods. - In terms of the provisions contained in paragraph 34 in Chapter V of the Policy, an application for grant of customs clearance permit for import of gifts of items appearing in Negative List of Imports may be made to the Director General of Foreign Trade, New Delhi in the form given in Appendix VII supported by the following documents; (i) Donor's letter in original; and (ii) Proforma invoice."

34. In Application has to be made in the form given in Appendix VII of the Hand Book. The applicant has to make a declaration as per the format. The note appended to Appendix VII reads as follows :

"Documents to be submitted along with the application :

1. Original copies of TR/Bank Receipt/Demand Draft.
2. Certified photocopy of Proforma Invoice from foreign supplier showing CIF value, etc., of the goods.
3. Certified photocopy of Registration Certificate issued by concerned Authority.
4. Copy of recommendation of recommending authority, if any.
5. Donor's letter in original in case of import of gift.
6. 25 copies of the Annexure except Annexure V and application made in terms of para 51 of the Procedures."

35. Thus, it is seen, that the list of documents to be submitted along with the application includes the proforma invoice from the foreign supplier showing CIF value, etc., of the goods, copy of the recommendation of the recommending authority, if any, and the donor's letter in original in case of import of gift. The above things are obviously insisted upon by the Licensing Authority to satisfy itself that there has been no violation of the Foreign Trade (Development and Regulation) Act in the case of purchase of arms in foreign parts and in the case of gift, the identity of the donor is established so as to eliminate any shady deal under the guise of gift. Admittedly, those requirements have not at all been satisfied by the appellant.

36. General Exemption No. 38 deals with the exemption to specified sports

goods, equipments and requisites imported by National Sports Federation or by a sports person of outstanding eminence for training. The Central Government, in exercise of the power conferred by sub-section (1) of Section 25 of the Customs Act, 1962, exempts the goods of the description specified in Column 2 of the Table annexed to the General Exemption No. 38, and falling within the First Schedule to the Customs Tariff Act, 1975, when imported into India, from the whole of the duty of customs leviable thereon, which is specified in the said First Schedule, and from the whole of the additional duty leviable thereon u/s 3 of the second mentioned Act subject to the conditions specified in Column (3) against each serial number in column (1) of the said Table. Column 3 of the Table (Conditions) reads as follows :

"(a) The said goods are imported into India by a National Sports Federation, under a certificate issued by the Sports Authority of India or by the Sports Authority of "India for use in a national or international championship on competition, to be held in India or abroad;

(b) The importer, at the time of clearance of the goods, produces a certificate to the Assistant Collector of Customs from an officer not below the rank of a Director in the Sports Authority of India indicating,

(i) The name and address of the importer and the description, quantity and value of the said goods; and

(ii) That the said goods are required for the purpose specified in condition (a) above.

(a) The said goods are imported into India by a sports person of outstanding eminence for training purposes;

(b) The importer, at the time of importation of the goods, produces a certificate to the Asstt. Collector of Customs from an officer not below the rank of a Deputy Secretary in the Department of Youth Affairs and Sports, Ministry of Human Resource Development, Government of India indicating -

(i) the description, quantity and value of the said goods;

(ii) that the importer is a sports person of outstanding eminence; and

(iii) that the said goods are essential for the training purposes of the importer and recommends grant of the exemption."

37. The Baggage Rules, 1994 (Notification No. 11/94-Cus. (N.T.), dated 1-3-1994) was issued in exercise of the powers conferred by Section 79 of the Customs Act, 1962 and in supersession of the Baggage Rules, 1978, Transfer of Residence Rules, 1978, and the Tourist Baggage Rules, 1978. Rules 5(c) of the Baggage Rules clearly states that "nothing contained in this rule shall apply to any unaccompanied baggage or to the articles listed under Appendix A to those rules." Serial No. 1 of Appendix A is "fire arms". Therefore, the contention of the appellant that he would be entitled to import fire arms as baggage and part of

personal effects irrespective of their value and without an import licence is, in our opinion, contrary to the Baggage Rules. We have already noticed that fire arm is added in the negative list. The same can be imported only by way of a licence granted under the Act in the manner prescribed above.

38. We are unable to countenance the contention of the appellant that the fire arms could be freely imported under the Baggage Rules, which, in our opinion, has no basis whatsoever. It is not the case of the appellant that he has such a licence as per the above said provision to import fire arms. His case is, that no import licence is necessary to import the fire arms and the same can be brought as a baggage. We have already noticed that the Foreign Trade (Exemption From Application of Rules in Certain Cases) Order, 1993, which came into force on 31-12-1993, has been issued in supersession of the Imports (Control) Order, 1955 and the Exports (Control) Order, 1988. Para 3(9)(h) of the said order enables a person as passenger baggage to the extent admissible under the Baggage Rules for the time being in force. We have already noticed the General Exemption Notification Nos. 36 and 37 and Order Nos. 146 and 147 issued u/s 25 of the Customs Act, which would only operate as regards the total or partial exemption of the duty paid and would not affect the aforesaid provisions of the Export and Import Policy as regards the import of fire arms. The question of assessment of duty pursuant to the said notification would arise only in the case of import itself being a legal and valid one in accordance with the policy. Even the conditions set out as against the import of fire arms in the aforesaid two exemption orders have not been satisfied by the appellant so as to attract any duty concession de hors the validity or otherwise of the import of fire arms by the appellant.

39. A careful reading of the above Rules, Regulations, Notifications and the Policy of the Central Government would go to show that the requirement of the licence has nowhere been dispensed with.

40. The appellant contended that since the respondents on a few earlier occasions have cleared the goods duty free or cleared the goods on certain occasions against payment of concessional rate of duty, the respondents are bound to release the goods without insisting upon the production of licence by the appellant, who is a sports man of outstanding eminence. The respondents cannot take a different view from the long standing practice resulting in confiscation and levy of penalty. This argument was opposed by the learned Senior Standing Counsel for the respondents. Mr. V. T. Gopalan contended that the reliance placed by the appellant upon the earlier order by which fire arms brought by him were released, can be of no help to the appellant since the earlier orders of release were an administrative one and were not the result of a quasi-judicial adjudicatory process. Even otherwise, according to the learned Senior Standing Counsel, orders of authorities and the Tribunal cannot be equated to precedent. Further, one order cannot be judged with reference to the earlier or later order. It will be that the impugned order is a right order and the

earlier order or the later order is wrong, and that each order has to be judged according to its own facts and circumstances and the provision of law in force at that time. It is the specific case of the respondents in paragraph 6 of the counter affidavit that the earlier order is bad.

41. For the above submissions, Mr. V. T. Gopalan, learned Senior Standing Counsel, sought support from the following rulings reported in M. Ramiza Bi Saheba Vs. Income Tax Officer, Madras, Division Bench]; A. C. Paul v. Tax Recovery Officer, Tirunelveli [1977 TNLJ 453 - Division Bench]; Harpal Kaul Chahal v. Director, Punjab Instructions 1995 Suppl. (4) SCC 706; Chandigarh Administration and another Vs. Jagjit Singh and another, ; and Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others,].

42. In M. Ramiza Bi Saheba Vs. Income Tax Officer, Madras, , a Division Bench of the this High Court held as Follows :

"We reiterate what was said in the decision of a Bench of this Court to which one of us was party, in Writ Appeal Nos. 31 and 32 of 1954, namely :

"The fact that there are several "inconsistent orders of a Tribunal does not mean that all the orders are wrong, as contravening Article 14 of the Constitution. One order cannot be attacked as invalid solely on the ground that it is inconsistent on principle with an earlier or later order. It may be that the order impugned may be the right order and the other inconsistent order may be wrong. Each order, when it comes up before this Court, has to be examined on the merits, having regard to the facts and circumstances of that particular case".

43. In 1977 TLNJ 453, a Division Bench of this Court held at page 457 as follows :

"Now we shall deal with the question whether where assesseees who had income in Pakistan having been given by the Central Board of Direct Taxes a concession which they gave by stating that the tax should be calculated on the basis that their Indian income should be treated as their total income, "should also be extended to the assesseees in view of the equality clause embodied in Article 14 of the Constitution. What has been done in the circular is against the provisions of law. No one can contend before us in proceedings under Article 226 of the Constitution that the wrong act must be extended to him as well in order to satisfy the provisions of Article 14. The equality before the law does not mean that there must be equality in illegality. The statute compels us to take the view that we took and no action done without authority interpreting the statute in a wrong manner can be claimed to have conferred any benefit on the petitioner before us which he can by any strength of imagination claim to have conferred a right on him which would compel us to issue a writ by the exercise of our extraordinary jurisdiction. We, therefore, negative this contention as well".

44. In 1995 Suppl. (4) SCC 706, the Supreme Court has held as follows :

"It is next contended that along with the appellant two more candidates were selected and were appointed and their appointments were upheld by the High

Court. Denial to bar is violative of Article 14 of the Constitution. We find no force in the contention. The view of the High Court is obviously illegal and the judgment rendered would not form the ground for our holding that the others who got the benefit by illegal orders will be extended in favour of other candidates though illegally appointed. Article 14 cannot be extended to legalise the illegal orders though others had wrongly got the benefit of the orders. Under these circumstances, we find no ground to uphold the recruitment of the appellant as a physical Training Instructor. However, the fact remains that from 28-1-1971 the appellant has been continuing in service even till date, no doubt, by orders obtained from the court and pending litigation, we cannot give any specific direction as sought for to regularise her appointment. However, the dismissal of the appeal does not preclude the Government to consider her case if they so choose. Therefore, it is open to the appellant to make a presentation to the Government to consider her case and the Government to take a decision in that behalf. We direct that the appellant's service may not be terminated for a period of three months from today and in the meanwhile, the appellant should apply to the Government for consideration and her representation may be disposed of within that period. With the above observations, the appeal is dismissed."

45. In Chandigarh Administration and another Vs. Jagjit Singh and another, , the Supreme Court has held in paragraph 8 as follows :

"We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondents-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law - indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law - but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such

illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioner's case is similar to the other persons' case. But then why examine another persons' case in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course-barring exceptional situations - would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world."

46. In *Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others*, , the Supreme Court held in paragraph 9 as Follows :-

"Apart from that even if it is assumed that concession was shown to such stall-holders by the N.D.M.C. the appellants cannot make grievance in respect of discrimination under Article 14 of the Constitution. Having agreed to the terms of allotment they cannot legitimately claim that they should also be treated in the same manner. There appears to be some confusion in respect of the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. This guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or Court in a negative manner. To put it in other words, if an illegality or irregularity has been committed in favour of any individual or a group of individuals, the others cannot invoke the jurisdiction of the High Court or of this Court, that the same irregularity or illegality be committed by the State or an authority which can be held to be a State within the meaning of Article 12 of the Constitution, so far such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are sanctioned by law in their favour on principles of equality before law. Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such

claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination. None of the 98 stall-holders were implemented as parties to the writ petitions. The appellants questioned the validity of the allotment of 98 shops on concessional rates, without trade zoning restrictions in favour of the stall-holders of Panchkuain Road, but they were primarily interested that same concessions in respect of licence fee and relaxation in trade zoning restrictions, be also extended to them. Any such claim on their behalf cannot be entertained on the basis of concept of equality before law as enshrined in Article 14 of the Constitution."

47. In this context, we may also refer to the decision cited by the appellant, reported in *Vishundas Hundumal and Others Vs. State of Madhya Pradesh and Others*, , which was decided by a Three Judges Bench. In that case, certain existing stage carriage operators were allowed to operate on overlapped portions of notified routes while the petitioners before the Supreme Court denied such facility. In that case, the petitioners challenged the curtailing of their permits for routes, parts of which overlapped with the notified routes. The other permit holders in the class having stage carriage permits for certain routes, parts of which were overlapping with the notified route, were treated favorable by neither curtailing nor cancelling their permits and were permitted to ply their stage carriages by passing over a portion of the notified route. The Supreme Court directed that the conditions in permits curtailing the permits of the petitioners prohibiting them from passing over the overlapping portion of their routes with the notified route be quashed and declared to be of no consequence till all the operators including those excluded and similarly situated were similarly treated. Since the High Court did not find any willingness on the part of the State authorities to rectify the error either in the High Court or before the Supreme Court, the Supreme Court held that the discrimination under Article 14 of the Constitution is conscious discrimination and not accidental discrimination that arises from over-sight which the State is ready to rectify. In our opinion, the proposition laid down by the Supreme Court in that case cannot be equated to the case on hand. We are of the view that Article 14 of the Constitution cannot be extended to legalise the illegal orders, though others had wrongly get the benefit of that order on some stray instances earlier. Therefore, the contention of the appellant that the goods brought by him now also should be released as before cannot at all be countenanced.

48. In view of our above finding, the argument of the appellant that the respondents, are bound by the earlier orders of their superiors directing the release of the fire arms as baggages and since the adjudicatory authority has not stated any where in the impugned order that the earlier orders of their ultimate superiors were illegal and that they are not binding on it, the writ appeal is liable

to be allowed on this ground loses all its efficacy and is not valid as under the present Rules the appellant has to obtain import licence and comply with several other formalities for claiming the goods as gift. No letter from the donor is produced. The argument of the appellant that the 5th respondent has not dealt with this aspect of the matter and does not deny any of the allegations in his counter affidavit is not correct. We have gone through the counter affidavit filed by the respondents. They have specifically denied the allegations wherever it is necessary.

49. The contention of the appellant that when the goods were voluntarily declared, the same is not liable for confiscation or levy of penalty as laid down in the judgment reported in *K.R. Ahmed Shah Vs. Additional Collector of Customs, Madras and Others*, is also liable to be rejected. The declaration, if any, made by the appellant can only be referable to the contents of the goods. He deposited the gun with the authorities since he could not produce the licence issued by the police authorities. We are of the view that a mere voluntary disclosure of the goods to the customs authorities would not in any way preclude the authorities from adjudicating upon the nature of the import and whether the appellant is entitled to clear the goods without payment of duty and without any licence. Therefore, the voluntary disclosure would not in any way advance the case of the appellant as claimed by him.

50. The appellant next contended that if the respondents had acted bona fide under mistaken belief that fire arms can be imported only against an import licence, they would have given the option to redeem the fire arms against levy of redemption fine and failure to abide by the dictates of the Customs Act clearly spells out the mala fide action of the respondents. We are unable to appreciate this contention as well. Even in the impugned order it has been very specifically stated that the appellant is not entitled to clear the goods without any valid licence and that the goods are liable to be confiscated for contravention of the statutory provisions. Since the authorities have found that the appellant has violated the statutory provisions, the goods are liable to be confiscated and under such circumstances, the question of giving option to the appellant to redeem the fire arms against levy of redemption fine does not at all rise. We are also unable to accept the argument of the appellant that the guns can be imported as baggage, without import licence. It is also not possible to accept the contention that General Exemption No. 38 contained in Notification No. 146/94 demonstrates that fire arms and ammunition can be imported as baggage by renowned shooters without import licence. We have already given our reasons on this point in paragraphs supra.

51. At the time of hearing, a specific offer was made by the learned Senior Standing Counsel for the respondents across the Bar that the fire arms could be directed to be kept for a stated period without being disposed of so as enable the appellant at least to get import licence as contemplated under the provisions of the Act and clear the same in accordance with the licence. This offer was also put

to the appellant by the Court but the appellant refused to accept the said offer. The customs authorities on their part would not be in a position to know the requirements of the appellant as to the number of arms for his training and competition purposes unless the same is certified by the Department of Youth Affairs and the Sports Authority as required under the Export and Import Policy and as such, there is nothing wrong in the adjudicating authority not exercising the discretion as to permit the redemption of the confiscated arms by the appellant upon payment of redemption fine as contemplated u/s 125 of the Customs Act. Fire arms being in the negative list, the adjudicating authority may, in his discretion, allow redemption and that the discretion could not be exercised by taking into account the illegal import of fire arms, which cannot be easily permitted to be redeemed as a matter of course since the security is involved. The appellant has not established his requirement of fire arms in the manner known to law. It is presumably for this reason the appellant has turned down the aforesaid offer to get the requisite licence at least now. The appellant had stated that the goods were gifted to him by his close associate. If so, nothing prevents the appellant from obtaining a donor's letter in original and produce the same before the authority concerned to get back the goods.

52. We have already noticed that the appellant imported the goods without a licence. The Baggage Rules themselves do not permit import of restricted items without an import licence and customs clearance certificate. The authority under the Customs Act and the learned Single Judge have proceeded to hold that the weapons are liable for confiscation in terms of Section 111(d) of the Customs Act, 1962. It is not the case of the appellant that he has got a licence or customs clearance permit for bringing the weapons to India. Likewise, the appellant is also not entitled to any exemption from duty as the goods are not exempted from duty and that the appellant is also not entitled to the benefits of Notification No. 146/94. The valuation as arrived at by the 5th respondent in the impugned order has not been questioned before us. The 5th respondent has finally decided the question as to the personal penalty u/s 112 of the Customs Act and held that the appellant is liable for payment of personal penalty. We have gone through the various provisions of law and we are unable to find anything illegal in the impugned order passed by the 5th respondent. The order of the learned Single Judge is perfectly justified in dismissing the writ petition. However, the view expressed by the learned Single Judge that the writ petition is maintainable even though the petitioner/appellant has an alternative and effective remedy by way of appeal cannot be accepted as correct. We have already pointed out as to why it has become necessary for us to deal with the contentions of the petitioner/appellant relating to the merits of the claim made by him. We are, therefore, unable to give any relief to the appellant because the legal provisions clearly prohibit import of fire arms except in accordance with the licence or a customs clearance permit. Therefore, there is no question of entertaining the claim of the appellant for payment of compensation or compensatory costs as claimed by him.

53. We have given our anxious consideration to the arguments advanced by both

sides. The adjudicating authority has formulated the necessary points for determination and has rendered a finding on a consideration of the rules, notifications and also the provisions of the relevant Acts. The said order has also been confirmed by the learned Single Judge. The orders of the adjudicating authority and the ultimate decision of the learned Single Judge, dismissing the writ petition has to be affirmed. However, we do not approve the view of the learned single Judge as to the maintainability of the writ petition in the circumstances already stated above.

54. For the foregoing reasons, the writ appeal fails and is dismissed. However, there will be no order as to costs.