(1996) 01 MAD CK 0038

In the Madras High Court

Case No : Writ Petition No. 396/96 and W.M.P. 645/96

R. Sundar APPELLANT

Vs

Deputy Collector of Customs, Tuticorin RESPONDENT

Date of Decision : 23-01-1996

Acts Referred:
Customs Act, 1962 — Section 110, 129E

Citation : (1996) 82 ELT 451

Hon'ble Judges : A.R. Lakshmanan, J

Bench : Single Bench

Advocate : Ms. V. Hema, for the Appellant; Shri K. Jayachandran, A.C.G.S.C, for the Respondent

Judgement

1. By consent of both parties, the main writ petition itself is taken up for final hearing.

2. I have heard Miss. V. Hema, learned counsel for the petitioner and Mr. K. Jayachandran, learned Additional Central Government Standing

Counsel. The above writ petition has been filed to quash the order dated 20-12-1995 passed by the second respondent, the Commissioner of

Customs and Central Excise (appeals), Tiruchirapalli. The petitioner is the proprietor of a firm, M/s. Sunrise Agencies which is a registered dealer

dealing in Textiles, cloves, cloves petals, cashewnut shells and other spices. The petitioner is an assessee on the file of the Deputy Commercial Tax

Officer, Nagercoil, both under the Tamil Nadu General Sales Tax Act and the Central Sales Tax Act. The firm applied for allotment of Code

Number i.e., Importer Exporter Code Number and the Government of India, Ministry of Commerce, Office of the Deputy Chief Controller of

Imports and Exports, Madurai, in their letter dated 28-1-1992 granted the

Importer Exporter Code Number. Similarly, the Reserve Bank of India,

Exchange Control Department, Madras also allotted Code Number to the petitioner. Further, the petitioner''s firm is a Member of the Cotton

Textiles Export Promotion Council. During the course of the business, the petitioner purchased 1000 Kg. of cloves on 25-1-1992 from one Glen

Valley Estate, Alencholai, Kanyakumari District. According to the petitioner, the Estate sold 1000 Kg. of cloves by their Sale Bill No. 308, dated

25-1-1992 and this was carried to the godown by lorry TNU 9949 and the trip sheet of the Goods vehicle was checked during transit by the

Assistant Commercial Tax Officer, Nagercoil, on 25-1-1992. This purchase was entered in the Day Book of the firm on 25-1-1992. Again the

firm purchased 1000 Kg. of cloves from Silver Rock Estate under Bill No. 59, dated 6-2-1992. On 7-2-1992, the firm purchased another 1000

Kgs. of cloves and 4015 Kgs. of clove leaf from Silver Rock Estate by Bill No. 61. These three purchases are the subject matter of the writ

petition. This apart, the petitioner also purchased small quantities of cloves by his permit and 350 kg. of cloves were sold on 4-2-1992 and the

same were entered in the Day Book and Ledger maintained by the petitioner. According to the petitioner, the closing stock as on 7-2-1992 at the

godown was 3716 Kg. of cloves which was found to be correct by the Assistant Commercial Tax Officer, Nagercoil, during his visit on 7-2-1992

and signed the ledger which shows the stock details. The office of the petitioner was closed from 8-2-1992 till 11-2-1992. During this period there

was no business transaction and the stock as verified by the Assistant Commercial Tax Officer, Nagercoil, was very much in the godown and the

books of accounts were in the office of the petitioner which is situated at Nagercoil. While so, the officers attached to the Customs Department,

Nagercoil, intercepted and stopped a lorry bearing TDS, 1332 on 10-2-1992 at Eruvadi, a place in between Nagercoil and Tirunelveli. The

officers detained the lorry and obtained statements from the driver and cleaner of the lorry, implicating the petitioner with smuggling activities.

Later, based on the statements of the lorry driver and cleaner, the officers went to the godown of the petitioner and on seeing that the godown is

locked, the officers broke open the seal of the godown and found 14 bags of cloves. The officers seized the total quantity of cloves available by packing the cloves in gunny bags. The total quantity seized by the officers was 74 bags weighing 3700 kgs. The lorry driver and the cleaner who

gave the statement before the officers on 10-2-1992 retracted the same on 12-2-1992 when they were arrested and under the police custody.

The petitioner appeared before the officers on 20-2-1992 and claimed ownership of the goods and requested for release of the goods. Since the

officers did not release the goods, the petitioner filed Crl. M. P. No. 222 of 1992 before the Additional Chief Judicial Magistrate, Madurai. The

petitioner filed all the documents before the Court. By an order, dated 27-3-1992, the Court ordered release of the goods. The Court gave a

finding that search warrant was not served on the petitioner and hence it is not valid and is violative of principles of natural justice, the petitioner

was doing business in cloves with due Sales Tax Registration and the seized cloves were not smuggled items and the seized items are perishable in

nature. However, the Department filed Crl. O. P. No. 3807 of 1992 against the order passed by the lower authority, in this Court. This Court held

that the goods seized by customs officials which are permitted under the customs Act, cannot be ordered to be released and the Criminal Court

has no jurisdiction to order release of the goods. The petitioner thereupon filed writ petition, W. P. No. 8437 of 1992 for a mandamus to release

the seized items. This court directed the first respondent to adjudicate the matter since it was alleged that the show cause notice was issued by the

respondents on 31-7-1982. This Court in W. M. P. No. 18578 of 1992 and 20514 of 1992, filed for a direction for release of the goods and

extension of time to adjudicate the matter, permitted the petitioner to file his objections within two weeks and directed the first respondent to

complete the adjudication proceedings within four weeks from 22-9-1992 positively. This Court also gave permission to both parties to move this

Court for further directions after the order is passed by the Deputy Collector as indicated above. The petitioner has also filed a detailed reply to

the show cause notice issued by the first respondent. The reply was filed on 1-10-1992. In the reply the petitioner pointed out various infirmities.

The petitioner also attended the personal hearing and explained all the documents and proved his case. The first respondent passed the

adjudication order on 21-10-1992. In that order, the first respondent absolutely confiscated the cloves seized from the godown of the petitioner and also levied a penalty of Rs. 5 lakhs on the petitioner in his individual capacity. The petitioner filed appeal before the second respondent and

pending appeal the petitioner filed an application u/s 129E of the Customs Act for waiver of deposit. The second respondent directed the

petitioner to deposit a sum of Rs. 1.5 lakhs which was not paid and hence the appeal was dismissed. The petitioner filed writ petition, W. P. No.

9244 of 1993 and this Court by an order, dated 30-6-1995 directed the petitioner to pay a sum of Rs. 25,000/- and on such payment directed

the second respondent to take up the appeal and dispose of the appeal on merits. The petitioner paid the amount and the appeal was taken up for

hearing before the second respondent and the petitioner has raised several issues before the said Court. The second respondent passed an order

on 20-12-1995 confirming the order of the first respondent. According to the petitioner, the second respondent has merely cited various decisions

of the Supreme Court and passed orders without properly appreciating the binding nature of the same. Aggrieved against the order of the second

respondent, dated 20-12-1995, the petitioner, filed the present writ petition. Learned counsel for the petitioner Miss V. Hema raised the following

important legal contentions :

(1) The Show cause notice itself is clearly barred by limitation, and when the notice itself is barred by limitation, the order passed by the concerned

authority is a nullity.

(2) The cloves being non-notified goods under the Customs Act, absolute confiscation is not permissible. This was the view expressed by this

Court in W. P. No. 10874 of 1981, dated 19-6-1987 [since reported in N. Jayathilakan Vs. Additional Secretary,].

The grievance of the petitioner is that though this decision was cited before the second respondent, he has not even referred to the same, and when

the Department is not able to establish the irregularity, confiscation or penalty is not at all, imposable. It is also contended that the principles of

natural justice has been violated, when enquiry and verification were conducted by the Department behind the back of the petitioner and without

giving any opportunity to him to rebut it. It is also contended that the whole proceedings has to be quashed for violation of principles of natural

justice. In my opinion, the matter has to go back for completing the adjudication on the points raised by the petitioner. According to the petitioner, the seizure was made on 11-2-1992 and the notice was served on 17-8-1992 and therefore, as per Section 110(2) of the Customs Act, the period of limitation of six months from the date of seizure, expires on 10-8-1992. But in this case notice was served on 17-8-1992. Therefore, it is contented that the notice is barred by limitation. In support of her contention, learned counsel for the petitioner cited a decision of the Supreme Court in K. Narasimhiah Vs. H.C. Singri Gowda, which is to the effect that giving of the notice is not complete unless and until it reaches the person concerned or its actual tender to him. Learned counsel for the Department has contended that mere despatch of the notice to the person does complete the giving of notice. However, I am of the view that the period of limitation has to be decided by the authorities concerned with reference to all the documents relied on by both the parties. Learned counsel for the petitioner has also cited decisions in A. I. R. 1972 Guj 126 and I.J. Rao, Asstt. Collector of Customs and Another Vs. Bibhuti Bhushan Bagh and Another, wherein the Supreme Court has observed that if the notice is not issued in the confiscation proceedings within six months from the date of seizure, the person from whose possession the goods have been seized becomes immediately entitled to the return of the goods. It is possible that while notice was issued before the expiry of that period, service of such notice may not be effected on the person concerned in sufficient time to enable the Collector to make the order of extension before that period expires. According to the petitioner this has not been done by the Collector of Customs. Since the notice has not been served on the petitioner within the time, the proceedings are liable to be quashed as barred by limitation. There are also other decisions to support the case of the petitioner. The petitioner must be given sufficient opportunity to place all the authorities. The Department must be permitted to place all the authorities before the Court concerned. I see force in this contention. However, since the matter required consideration of seizure of documents and service of notice, it is but proper that the authorities themselves are directed to consider and decide the issue. Therefore, I remit the matter on this issue to the first respondent.

3. The next contention of the learned counsel for the petitioner that the

principles of natural justice has been violated merits acceptance. It is

contended by the learned counsel for the petitioner that statement was obtained from one of the suppliers of the petitioner behind the back of the

petitioner. Therefore, I see much force in the contention of the learned counsel for the petitioner and she has cited a decision in Jawhari Lal Baid v.

Addl. Collector of Customs (Prev.) 1992 (52) E.L.T. 278, Which says that when enquiry and verification are conducted by the Department

behind the back of the petitioner and without giving him an opportunity to rebut, it is certainly a violation of principles of natural justice and

therefore, such order cannot be allowed to stand. A decision of this Court reported in Nuwood Private Limited, Madras Vs. Superintendent of

Central Excise, , was also referred to in the above case. It is also contended by the learned counsel for the petitioner that voluminous documents

produced during the adjudication proceedings were not verified due to time limit. Deputy Collector of Customs, Tuticorin, in his order dated 21-

10-1992 has observed as follows :-

Only at the time of personal hearing i.e., on 19-10-1992 documents were produced. On that day voluminous documents and registers had been

produced stating that the cloves were legally acquired under proper documents and that proper accounts had been maintained. Since the case has

to be adjudicated before 21-10-1992 as per the Honourable High Court''s directions all the documents could not be verified because of the time

limit.

4. The reasoning given by the Deputy Collector of Customs, is far from satisfactory. While adjudicating the matter, the Deputy Collector of

Customs is duty bound to consider all the documents placed before him and he cannot look into some documents and refuse to look other

documents because of the availability of short span of time. Under such circumstances, the Deputy Collector of Customs, ought to have adjourned

the enquiry and asked for extention of time. He has considered the matter without looking into all the documents produced by the petitioner. The

procedure adopted by the Deputy Collector of Customs, cannot at all be countenanced. Therefore, the order passed by the Deputy Collector of

Customs, Tuticorin, dated 21-10-1992 is liable to be set aside on this ground.

5. It is also the case of the learned counsel for the petitioner that the purchase

bills produced by the petitioner were neither verified nor considered

by the adjudicating authority and therefore, this confiscation order without looking into all the documents produced, is not justified and therefore,

liable to be set aside.

6. The findings of the Appellate Authority namely, the Commissioner of Customs, Central Excise (Appeals), Tiruchirapalli, dated 20-12-1995 is

also not satisfactory when he says that whatever documents produced before him were only verified and such documents are not according to the

claims made by the appellant before it, and therefore, the principle of natural justice is violated. The order of the Appellate Authority also suffers

from the same infirmity as pointed out by the counsel for the petitioner.

7. The next contention that the cloves are non-notified goods and therefore, absolute confiscation is not permissible, is also supported by a

judgment of this Court in a writ petition W. P. No. 10874 of 1981, dated 19-6-1987 [since reported in 1987 (3) E.L.T. 47 (Mad.)] (N.

Jayathilakan v. Addl. Secretary to Govt. of India and Another), by K. Venkataswami, J. as he then was. Therefore, in view of the above

judgment, the order passed by the authorities absolutely confiscating the goods, is liable to be set aside and accordingly, the said finding is set

aside. The matter is remitted back to the first respondent with a direction to look into all the documents and papers filed by the petitioner and after

giving sufficient opportunities to the petitioner to pass appropriate final orders in accordance with law. The writ petition is allowed in the above

terms. No costs. Consequently, W. M. P. No. 645 of 1996 is also dismissed.

