
(2008) 08 MAD CK 0088
In the Madras High Court
Case No : Writ Petition No. 89 of 2001

Rajaram Jora

APPELLANT

Vs

Registrar, CEGAT

RESPONDENT

Date of Decision : 26-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 111, 112, 128, 128(1), 153
General Clauses Act, 1897 — Section 27

Citation : (2009) 14 STR 451

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : A. Thiagarajan, for the Appellant; S.M. Deenadayalan, for the Respondent

Final Decision : Allowed

Judgement

M. Jaichandren, J.—Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondents.

2. The petitioner has stated that he is a native of the State of Rajasthan. On 24-2-92, the officers attached to the Enforcement Directorate, Government of India, Chennai, had searched the premises under the petitioner's occupation and had seized 22 gold biscuits weighing 2565 gms valued at Rs. 7,35,247,81. The officers had also seized certain records and had recorded statements from various persons from different places. The officers had also recorded certain incriminating statements from the petitioner by detaining him for more than three days and by using force. The petitioner had retracted the statements made by him immediately after his release on bail, on 22-5-92, and by a letter, dated 30-6-92, the petitioner had submitted that the gold was purchased by him under a baggage receipt No. 00840, dated 20-4-92 and it was cleared on arrival at the Bombay Air Port by Abu Becker of Kerala, from whom the gold biscuits had been purchased by the petitioner.

3. It has been further stated that the Additional Commissioner of Customs had issued a show cause notice calling upon the petitioner to explain as to why the gold biscuits should not be confiscated, u/s 111(d),(i) and (m) of the Customs Act, 1962, and as to why personal penalty should not be imposed on the petitioner, u/s 112 of the Act. The petitioner had submitted his detailed objections to the Additional Commissioner of Customs and he had produced the original baggage receipt for his verification. During the course of the personal hearing the petitioner had established that the gold in question was acquired and possessed by the petitioner through proper channel. However, the Additional Commissioner of Customs had confiscated the gold based on the initial statement made by the petitioner and also by stating that the baggage receipt issued by the customs authority of Bombay to Mr. Abu Becker of Mallpuram, was not given at the time of the seizure. After the personal hearing, the petitioner had not received the Order-in-Original passed by the third respondent, in Order No. OS 105/92-R.D, dated 11-1-94.

4. It has been further stated that the Commissioner of Customs, Madras, had prosecuted the petitioner for the offence alleged to have been committed under the provisions of the Customs Act, in C.C. No. 11 of 1996, before the Additional Chief Metropolitan Magistrate E.O.I, Madras. While the proceedings were going on before the Court of the Additional Chief Metropolitan Magistrate, the departmental authorities had produced the adjudication order. Thereafter, the petitioner had given a letter to the respondents calling upon them to furnish a copy of the adjudication order as they had not served the said order on the petitioner. On 28-10-99, the petitioner had given a letter to the Superintendent of Customs, Adjudication Unit and had sought for the service of the adjudication order on the petitioner. By a letter, dated 21-12-99, the Superintendent of Customs, Adjudication Unit, had furnished a copy of the adjudication order to the petitioner. The Superintendent of Customs, Adjudication Unit (SEA) had however, stated that the case was adjudicated and the copy of the Order-in-Original had been despatched to the petitioner, on 1-2-94. The Superintendent of Customs has not stated as to whether it was served on the petitioner or on any one of the adult member of his family. As the petitioner had not received the Order-in-Original from the third respondent, he had filed an appeal before the Commissioner of Customs (Appeals), on 28-1-2000, u/s 128(1) of the Customs Act, 1962, within the time limit prescribed for filing of such appeal from the date of receipt of a copy of the Order-in-Original from the Superintendent of Customs. The Commissioner of Customs (Appeals) had granted a personal hearing of the petitioner on 6-4-2000. During the course of the personal hearing, the Commissioner of Customs (Appeals) had never raised the point of limitation. However, he had passed an order in C4/48/0/2000-SEA.CUS.290/2000, dated 20-4-2000, on the ground of limitation. Since the counsel appearing on behalf of the petitioner had not been told that the point of limitation would also be raised at the time of hearing of the appeal, both factual and legal statements could not be made on the said issue. Therefore, the Commissioner of Customs (Appeals)

was not justified in dismissing the appeal on the ground of limitation, without giving the petitioner an opportunity to address the said issue.

5. It has been further stated that the petitioner had filed an appeal before the first respondent Tribunal, on 30-5-2000, challenging the order of the second respondent, specifically, stating that the order of the second respondent was illegal, arbitrary and against the principles of natural justice. The petitioner had further submitted that since the Order-in-Original had not been served on him, u/s 153 of the Customs Act, 1962, there was no proper service of the Order-in-Original on the petitioner. For all practical purposes, with regard to the issue of limitation, the date of service of the Order-in-Original would be the date on which the petitioner had received a copy of the said order from the Superintendent of Customs with a covering letter, dated 21-12-99. Section 153 of the Customs Act, 1962, reads as follows:

153. Service of order, decision etc. - Any order or decision passed or any summons or notice issued under this Act, shall be served,-

(a) by tendering the order, decision, summons or notice or sending it by registered post to the person for whom it is intended or to his agent; or

(b) if the order, decision, summons or notice cannot be served in the manner provided in Clause (a), by affixing it on the notice board of the customs house.

According to the said Section, the order has to be served on the petitioner as provided therein. However, the respondents have not been in a position to show that they had followed the provisions of Section 153 of the Customs Act, 1962, in serving the Order-in-Original on the petitioner. Therefore, the order passed by the Commissioner of Customs (Appeals), on 20-4-2000, holding that the appeal filed by the petitioner was beyond the time limit prescribed for the filing of such an appeal, is arbitrary, illegal and contrary to the principles of natural justice. In such, circumstances, the petitioner has preferred the present writ petition before this Court, under Article 226 of the Constitution of India.

6. In the counter affidavit filed on behalf of the respondents, the claims made by the petitioner have been denied. It has been submitted that on 22-4-92, the officers of the Enforcement Directorate had conducted the search of the room occupied by the petitioner in a lodge, under a search warrant. They had seized 22 gold biscuits of 2565 gms, clandestinely, concealed in a cushion chair sofa and in the cavity of the bathroom wash basin. During the course of the investigation, the petitioner had given a voluntary statement in Hindi to the officers, admitting his guilt of illicit possession of gold with foreign markings, without any valid licence. Therefore, the petitioner was arrested and remanded before the Magistrate on 24-4-92. However, as an after thought the petitioner had retracted his earlier statement, belatedly, on 30-6-92. Thus, the petitioner had attempted to introduce a new theory after two months from the date of the seizure stating that he had purchased the seized gold from one Abu Becker of Mollapuram. The petitioner had not produced the baggage receipts at the time of the search and

seizure. In his earlier statement, dated 23-4-92, the petitioner had not stated anything about Abu Becker, or the alleged purchase of gold from him. Therefore, the adjudicating authority had held that the petitioner had possessed the gold, illegally, as there was no baggage receipt produced by him at the time of the seizure. The adjudication Order-in-Original had been furnished to the petitioner by Registered Post on 1-2-94. Even at the time of his prosecution before the Additional Chief Metropolitan Magistrate, Egmore, in C.C. No. 11 of 1996, a copy of the adjudication order had been produced. The petitioner did not deny, the receipt of the said order during the course of the trial or thereafter. However, with an ulterior motive, the petitioner by his letter, dated 28-10-99, had sought for the copy of the order. The department had furnished a copy of the adjudication order, on 21-12-99, clearly indicating that the order had been furnished to him only after the adjudication, on 1-2-94, by registered post, to the address available on the records given by him. Therefore, the petitioner had preferred an appeal before the appellate authority. The appellate authority after considering the contentions raised on behalf of the petitioner had held that the order had been duly served on the petitioner by Registered Post, on 1-2-94, in terms of Section 153 of the Customs Act, 1962. The appeal had been filed by the petitioner only on 28-1-2000 and it is beyond the period of three months provided under the Statute. Hence, the appeal had been rejected as time-barred. Thus, the contention of the petitioner that he had received the order only on 27-12-99, is not tenable and his claim that he had preferred the appeal within three months from 27-12-1999 is also unacceptable.

7. It has been further stated that the petitioner had challenged the order, dated 20-4-99, passed by the appellate authority, namely, the Commissioner of Customs (Appeals) before the Tribunal (CEGAT). The Tribunal had observed that it did not have the power to enlarge the time for filing the appeal beyond the period of three months, u/s 128(1) of the Customs Act, 1962. The Tribunal was satisfied that a copy of the adjudication order had been served on the petitioner, by Registered Post, in terms of Section 153 of the Customs Act, 1962, on 1-2-94 and therefore, the appeal filed by the petitioner is beyond the period of limitation provided by the statute.

8. The learned Counsel for the petitioner had submitted that according to Section 153 of the Customs Act, 1962, the Order-in-Original ought to have been served on the petitioner as provided therein. A mere acknowledgement by the postal authorities cannot be held to be sufficient to prove that the Order-in-Original, dated 11-1-94, passed by the Additional Commissioner of Customs (Preventive), Chennai, had been served on the petitioner, as provided u/s 153 of the Customs Act, 1962. It has been stated that the Order-in-Original, dated 11-1-94, issued by the third respondent had been received by the petitioner only during the criminal proceedings in C.C. No. 11 of 1996, on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai. The petitioner had received the order from the Superintendent of Customs, along with a covering letter, on 21-12-99. Since the petitioner had filed the Appeal before the Commissioner of Customs

(Appeals), on 28-1-2000, u/s 128(1) of the Customs Act, 1962, it is within the period of limitation prescribed by the statute. In such circumstances, the appellate authority, namely, the Commissioner of Customs (Appeals), the second respondent herein, could not have dismissed the appeal based on the issue of limitation, without going into the merits of the case. No reasons have been given as to how the appeal was belated. Normally, if an appeal had been filed beyond the period prescribed for filing of such an appeal, it would have been returned if it was found that it had been filed without a petition to condone the delay in filing the appeal. Instead, the case had been heard on merits. However, the appeal had been dismissed by the appellate authority based on the issue of delay. No opportunity had been given to the petitioner to explain the delay, if any, during the hearing of the appeal by the second respondent. Since the appeal had been numbered and the waiver application had also been numbered, without being returned, it clearly shows that the appellate authority had impliedly accepted that the appeal had been filed within the time prescribed by law, as provided u/s 128 of the Customs Act, 1962, which reads as follows:

128. Appeals to Commissioner (Appeals). - (1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a Commissioner of Customs may appeal to the Commissioner (Appeals) within sixty days from the date of the communication to him of such decision or order:

Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.

(2) Every appeal under this section shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf.

However, the appellate authority had passed an order, dated 20-4-2000, in C4/48/0/2000-SEA.CUS.290/2000, stating that as seen from the records the appeal against the order, dated 11-1-94, has been filed on 28-1-2000. As per Section 128(1) of the Customs Act, 1962, an appeal has to be filed before the Commissioner of Customs (Appeals), within three months from the date of the communication of the order and the time limit prescribed may be extended by the Commissioner for a further period of three months, if sufficient cause has been shown by the appellant that he was prevented from filing the appeal within the stipulated time. No further extension of time is permissible under the said statute. The appellate authority had also stated that it is seen from the records available that the Order-in-Original, dated 11-1-94, had been despatched to the petitioner by registered post on 1-2-94 and the same had been acknowledged by the postal department. In terms of Section 153 of the Customs Act, 1962, the Order-in-Original is deemed to have been served, on 1-2-94, and therefore, the appeal filed by the petitioner on 28-1-2000, after a delay of nearly six years, is clearly time-barred. Since the appeal had failed on the issue of limitation, the

appellate authority had not considered the other aspects raised for consideration in the said appeal.

9. The first respondent Tribunal (CEGAT) before which the petitioner had preferred an appeal, on 30-5-2000, challenging the order of the second respondent, dated 20-4-2000, confirmed the order of the second respondent by stating that the burden is on the appellant thereon to discharge the onus of proof by showing that the order was never served on him. Since such a burden has not been discharged by the appellant, it would be construed that the Order-in-Original, dated 11-1-94, had been served on the appellant before the Tribunal, who is the petitioner in the present writ petition. On 1-2-94, when the said order, dated 11-1-94, had been despatched to him by registered post, it is deemed to have been served on the petitioner, as provided u/s 153 of the Customs Act, 1962. Therefore, the appeal filed by the petitioner before the appellate authority was out of time. Thus; the first respondent Tribunal had dismissed the appeal confirming the order, dated 20-4-2000, passed by the second respondent.

10. The learned Counsel appearing on behalf of the respondents had submitted that the service of any order, summons, or notice, issued under the Customs Act, 1962, shall be served by tendering the order, decision, summons or notice, or by sending it by registered post to the person, for whom it was intended or to his agent. If the order, decision, summons or notice cannot be served in the manner provided in Clause (a) of Section 153 of the Act, then, the same could be served by affixing it on the notice board of the Customs House. Even if the order, dated 11-1-94, had not been received by the petitioner, it would be deemed to have been served on him, if it had been sent by Registered Post. It has been stated that the Order-in-Original, dated 11-1-94, issued by the Additional Commissioner of Customs (Preventive), Chennai, the third respondent herein, had been sent to the petitioner by registered post on 1-2-94, as seen from the acknowledgement by the postal department, dated 1-2-94.

11. The learned Counsel for the respondents had further submitted that since the Order-in-Original, dated 11-1-94, is deemed to have been received by the petitioner on 1-2-94, the appeal filed by him on 28-1-2000, is beyond the time limit prescribed for filing such an appeal, u/s 128 of the Customs Act, 1962. The statement of the petitioner that he had received the order, dated 11-1-94, only on 21-12-1999 and that he had filed the appeal before the appellate authority, on 28-1-2000, within a period of three months from the date of receipt of the said order cannot be accepted as true.

12. The learned Counsel for the respondents had relied on a decision of the Supreme Court in *M/s. Attabira Regulated Market Committee Vs. M/s. Ganesh Rice Mills*, wherein, it had been held that when a notice had been sent and when neither the acknowledgement nor the unserved envelope had been received by the sender it would be deemed that the notice had been served on the addressee.

13. He had also relied on a decision of a Division Bench of this Court in *P. Bhoormal Tirupati v. Additional Collector of Customs, Madras* 2000 (126) E.L.T. 65 (Mad.), wherein it had been held that while reading Section 153 of the Customs Act, 1962, along with Section 27 of the General Clauses Act, 1897, there would be a normal presumption of service, unless the contrary is proved. The service shall be deemed to have been properly effected when a letter properly addressed, prepaid and posted by Registered Post. Proof to the contrary can only be shown to the limited extent of proving that the service had not been effected at the time at which the letter would be delivered in the ordinary course of post.

14. The learned Counsel for the respondents had relied on Section 27 of the General Clauses Act, 1897, to show that it would be sufficient, for the purpose of presuming that the Order-in-Original, dated 11-1-94, passed by the third respondent, was served on the petitioner, in accordance with Section 153 of the Customs Act, 1962, if the said order had been sent by Registered Post. Section 27 of the General Clauses Act, 1897, which reads as follows:

27. Meaning of service by post. - Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

It has also been stated that the acknowledgement of the postal department is on 1-2-94. Since service of the order shall be deemed to have been effected on 1-2-94, the appeal filed by the petitioner on 28-1-2000, after a delay of nearly six years had been rightly rejected by the appellate authority, by his order, dated 20-4-2000, made in C4/48/0/2000-SEA.CUS. 290/2000. The appeal filed by the petitioner before the first respondent Tribunal (CEGAT) had also been rightly dismissed by an order, dated 31-10-2000, confirming the order passed by the appellate authority on 20-4-2000. Hence, the writ petition filed by the petitioner is devoid of merits and liable to be dismissed.

15. Considering the submissions made by the learned Counsels appearing on behalf of the petitioner as well as the respondents and on a perusal of the records available, it is seen that the Commissioner of Customs (Appeals), the second respondent herein, had by his order, dated 20-4-2000, had come to the conclusion that the appeal filed by the petitioner against the order of the third respondent, dated 11-1-94, had been filed beyond the period of limitation prescribed, u/s 128 of the Customs Act, 1962 and therefore, the appellate Authority had not decided the appeal on merits. The appellate authority had not accepted the contention of the petitioner that he had received the Order-in-Original, dated 11-1-94, only along with the letter of the Superintendent of

Customs, on 21-12-99, and that he had filed the appeal on 28-1-2000, within three months from the date of receipt of the order, in accordance with Section 153 of the Customs Act, 1962. The appellate authority had rejected the appeal accepting the contentions raised on behalf of the respondents that the Order-in-Original, dated 11-1-94, is deemed to have been served on the petitioner, on 1-2-94, when it had been despatched by registered post on 1-2-94, as acknowledged by the postal department. The appellate authority had relied on Section 27 of the General Clauses Act, 1897, to hold that the appeal was belated, as the Order-in-Original, dated 11-1-94, shall be deemed to have been served on the petitioner if it had been despatched by registered post. The appellate authority had further held that it is for the petitioner to prove that no such service had been effected on him, as provided by the law. The first respondent, Tribunal had also rejected the appeal filed by the petitioner by its order, dated 31-10-2000, confirming the order passed by the second respondent appellate authority.

16. Even though the stand taken by the learned Counsel for the respondents may be correct, while reading the provisions of Section 153 of the Customs Act, 1962, along with Section 27 of the General Clauses Act, 1897, the learned Counsel has not been in a position to show that the Order-in-Original, dated 11-1-94, sent to the petitioner by registered post, on 1-2-94, had been properly addressed to the petitioner.

17. From a reading of Section 27 of the General Clauses Act, 1897, it is clear that the service shall be deemed to be effected, with regard to any document to be served by post, as provided by a Central Act or Regulation, by properly addressing, pre-paying and posting by registered post, a letter containing the document. However, nothing has been placed before this Court to show that all the necessary ingredients, as stated above, had been complied with. In such circumstances, the service of the order, dated 11-1-94, cannot be deemed to have been effected on the petitioner as provided by law. Since the second respondent appellate authority, as well as the first respondent Tribunal, had proceeded on the basis that the appeal filed by the petitioner on 28-1-2000, was belated, no decision had been rendered on merits, both by the second respondent in his order, dated 20-4-2000 and by the first respondent in its order, dated 31-10-2000.

18. In such circumstances, the impugned orders of the second respondent, dated 20-4-2000 and the order of the first respondent Tribunal, dated 31-10-2000, are set aside and the matter is remitted back to the second respondent, who is to pass appropriate orders thereon, on merits, and in accordance with law, taking into consideration the relevant documents filed by the petitioner, including the baggage receipt, relating to the seized items of gold. The writ petition stands allowed with the above directions. No costs.