**(2009) 07 KL CK 0037**

**In the High Court Of Kerala**

**Case No :** Writ Petition (C) No. 7117 of 2007 (V)

Shamsudeen Chirammal APPELLANT

Vs

Union of India RESPONDENT

**Date of Decision :** 22-07-2009

**Acts Referred:**
Customs Act, 1962 — Section 108, 155

**Citation :** (2011) 272 ELT 485

**Hon'ble Judges :** S. Siri Jagan, J

**Bench :** Single Bench

**Advocate :** P.A. Augustian, for the Appellant; John Varghese, ASG, for the Respondent

## Judgement

S. Siri Jagan, J.—After residing abroad for some time, the petitioner returned to India and he imported a foreign car under the Transfer of Residence Rules. But the respondents initiated proceedings against the petitioner for confiscation of the car on the ground that for applying the Transfer of Residence Rules, possession of the car for one year period prior to import is mandatory. The adjudication resulted in confiscation of the vehicle and direction to the petitioner to pay fine in lieu of confiscation as also penalty totalling to more than Rs. 15 lakhs. The petitioner paid the fine and penalty and got the vehicle released after payment of demurrage charges also to the Cochin Port Trust. The petitioner was not served with a copy of the adjudication order in spite of demand. The petitioner approached this Court by filing W.P. (C) No. 32475/2006 apprehending seizure of the vehicle on other charges. In that writ petition, by Ext.P10 judgment, this Court directed issue of another copy of the adjudication order to the petitioner. But this Court refused to issue any direction with regard to the seizure of the vehicle. Subsequently, on 22-1-2007, by Ext.P12, the vehicle was seized on certain allegations. The petitioner originally filed this writ petition for release of the vehicle. The petitioner did not get any positive orders regarding interim release of the vehicle in the writ petition. While the writ petition was pending, the vehicle was released on 15-12-2007. Now the petitioner confines his relief for compensation amounting to Rs. 6,90,000/- for alleged illegal seizure of the vehicle and keeping it under illegal detention for a period of about 11 months.

2. A counter affidavit has been filed by the respondents stating the reasons under which further investigation was undertaken and as to why the vehicle had to be seized and detained. The Senior Central Government Counsel for Excise and Customs would submit that the action of the respondents was clearly bona fide and for action in good faith, no action for damages would lie. He relies on Section 155 of the Customs Act, 1962, in support of his contentions.

3. I have considered the rival contentions in detail.

4. It cannot be disputed that upto the seizure of the vehicle on 22-1-2007, the action of the respondents was clearly justified, in so far as even in appeal, the petitioner could not get the earlier action annulled, but only succeeded in reducing the fine and penalty. Therefore, I need consider only the legality of the proceeding from the date of seizure on 22-1-2007 and as to whether the same was in good faith in so far as u/s 155 of the Act no legal proceedings would lie against the officers of the respondents for anything which is done or intended to be done in good faith, in pursuance of the Customs Act, Rules and Regulation. The action justified by the respondent in their counter affidavit thus :

4. It is respectfully submitted that the investigation into the subject import was started consequent to the receipt of communication from the Directorate of Enforcement, Trivandrum, suspecting Hawala transaction. In the statement given by the importer, Shri Shamsudeen Chirammal before the office of the Directorate of Enforcement, he had stated that he had, on clearance of the vehicle, entrusted the same to one Ameer Siddique, M/s. Deepa Associates, C/203, Seema Complex, Tulinj Road, Nalasopara, Thane as Ameer Siddique had loaned him the duty amout of Rs. 27,72,892/- on interest basis and the vehicle was given as security to the said Ameer Siddique. He has also submitted a copy of the agreement entered into in between Ameer Siddique and himself. As it appeared to be a case where the car was sold in the guise of lease before the completion of the Two Year No SALE period, in violation of the ITC provision, the matter was taken up for investigation. As a tread of tampering of chassis number of the vehicle for evading duty had been detected by SUB, the investigations were widened to include the said fact also. As part of investigation, Shri Shamsuddin''s statement was recorded u/s 108 of Customs Act, 1962 wherein he stated about the leasing etc. of the vehicle; that he had not repaid any money to Shri Ameer so far; that he had registered the vehicle in Madhya Pradesh, that too, much after the investigation had been launched and without production of the vehicle, through agent and that the vehicle was lying in a garage in Mumbai, Shri Shamsudeen produced the original R.C. Book in the next day.

5. It is respectfully submitted that the matter was referred to the RTO, Neemuch, Madyapradesh, as the importer was from Kasargode, the vehicle in Mumbai and

registration done in Madhya Pradesh. Also the No. Sale endorsement was not done in the R.C. Book. The matter was simultaneously referred to SUB Mumbai. In the investigation carried out by R and I Division, Headquarters Intelligence Unit, it was revealed that no person by name Ameer Siddique ever resided in the address C-203, Seema Complex and enclosed a certificate to the effect from the office of the said Housing Society. The officers of the HQIU, also examined the vehicle and ascertained that the Engine No. physically appearing on the vehicle was 3UZ0014648 as against the Engine No. of 0133978 informed by Toyota. Also there were difference in the model codes of the vehicle, which meant that there was definitely some tampering of the vehicle. Considering the inconsistencies in the whole import issue, the vehicle was detained by the office of HQIU.

In view of this explanation, I am satisfied that the respondents had sufficient reasons to initiate further proceedings and to seize the vehicle. I hold that action is clearly bona fide and in good faith.

5. But one fact disturbs me. At the time of admission on 2-3-2007, this Court passed the following interim order :

For instruction, post on 12-3-2007. Since the petitioner appears to be willing to take the vehicle by furnishing bank guarantee, if the petitioner seeks such relief, the respondents will specify the amounts, if any, for which the petitioner may be permitted to take the vehicle on bank guarantee.

6. Subsequently when the matter came up again on 28-3-2007, this Court recorded as follows :

Learned counsel for the respondents submits that the vehicle involved has not been released and the release may be impermissible since, as of now, the department is of the firm view that there will not be any clandestine transaction.

It is also submitted, unless the petitioner cooperates, investigation would not be completed. It is further submitted that a counter affidavit is placed on record.

Incorporate counter affidavit and post after vacation.

The purport of the order dated 2-3-2007 was to release the vehicle on bank guarantee, if the petitioner is willing to take the same. But the respondents took the adamant stand that they will not release the vehicle even provisionally. The only explanation given by them for this adamant stand is contained in paragraph 6 of their counter affidavit, which reads thus :

6. Efforts are underway to ascertain the actual make of the vehicle, as it is apparent that the vehicular details are tampered with. Unless the vehicle particulars are ascertained and is subjected to further examination, if needed, the issue of provisional release does not arise. Also, Investigations conducted up to this stage indicated that the importer has nothing to do with the car and the duty payment has been made through illegal/Hawala channels, which require further investigation, for which summons has been issued to the importer. The

 

Petitioner is attempting to mislead the Hon''ble Court by stating that the interest alone would be Rs. 1,780/- per day and so on. The investigation into the subject import are in progress and it is too premature to comment on any aspect. The above statement is only to divert the attention of the Hon''ble Court from the main issue of misdeclaration. In fact, the importer has stated falsehood in his statement given u/s 108 of Customs Act, 1962 and has mislead the investigations and therefore further investigation is necessary and the same can be completed only if the petitioner co-operates. Therefore, the department may be allowed to continue the investigations and the importer be directed to co-operate with the investigations.

When this Court indicated that if the petitioner is willing to provide bank guarantee for interim release of the vehicle, I do not think that the respondents were justified in taking such an adamant stand. In the above circumstances, I am inclined to direct the respondents to pay to the petitioner costs of this writ petition. Accordingly, the respondents shall pay an amount of Rs. 2000/- as costs to the petitioner.

The writ petition is disposed of with the above direction.