
(2010) 09 AP CK 0061

In the Andhra Pradesh High Court

Case No : Writ Petition No. 20465 of 2010

Srikanth Puskar

APPELLANT

Vs

The Deputy Commissioner of Customs

RESPONDENT

Date of Decision : 20-09-2010

Acts Referred:

Baggage Rules, 1988 — Rule 3, 4, 8

Customs Act, 1962 — Section 111, 112, 115(1), 115(2), 125

Foreign Trade (Development and Regulation) Act, 1992 — Section 3

Citation : (2010) 259 ELT 495

Hon'ble Judges : B.N. Rao Nalla, J;B. Prakash Rao, J

Bench : Division Bench

Advocate : G. Mohan, for the Appellant; A. Rajasekhar Reddy, for the Respondent

Judgement

B.N. Rao Nalla, J.—This writ petition is filed seeking to quash the Order-in-Appeal No. 46 of 2010 (H-II) Cus, dated 21.07.2010 passed by the Commissioner of Customs, Central Excise and Service Tax, (Appeals-II), Hyderabad whereby the Order dated 23.03.2010 passed by the respondent-Deputy Commissioner of Customs confiscating the firearms of the petitioner, was confirmed.

2. The brief set of events, which led to the present proceedings are that the petitioner, during his stay in U.S.A. with his wife from 1997 to 2009, purchased rifle and pistol in the years 2003 and 2004 respectively for their safety under valid licence and Transfer of Residence Scheme and also took membership with Rifle Association of A.P. While so, the petitioner asserts that with an intention to leave for India permanently, they shipped the firearms along with required ammunition and personal goods, and submitted a letter dated 25.01.2010 to the Assistant Commissioner of Customs, Hyderabad with supporting documents requesting him to release the weapons along with the ammunition under Transfer of Residence facility, but the respondent-Deputy Commissioner of Customs, by his order dated 23.03.2010, confiscated the goods viz. pistol, pistol empty magazines (3 Nos.) and ammunition of rifle in excess of a quantity of 50 Nos.

and released the other goods. Aggrieved by the order of the respondent, the petitioner preferred an appeal before the Commissioner of Customs, who dismissed the appeal. Now, the petitioner's grievance is that the Commissioner of Customs, without appreciating the provisions of Section 125 of Customs Act, 1962 (for brevity "the Act"), confirmed the order of the respondent, as such, he has filed the present writ petition seeking to quash the order dated 21.07.2010 and to give appropriate directions to the respondent to release Pistol CZ 83.32 along with empty pistol magazines.

3. The Learned Counsel for the petitioner, while strenuously advancing manifold arguments, mainly contended that the petitioner is entitled to the release of Pistol CZ 83.32 along with empty pistol magazines on payment of fine and penalty as per the provisions contemplated u/s 125 of the Act, and also referred to a judgment delivered by a Division Bench of this Court reported in Diwakar R. Kattar and Another Vs. Deputy Commissioner of Customs, ICD, Hyderabad, dated 07.02.2002) and submitted that the present writ petition is squarely covered by the judgment of the Division Bench, and the same may be disposed of in terms thereof.

4. Heard the Learned Counsel for both the parties and perused the material placed on record.

5. There is no serious dispute in regard to the aforesaid-chequered events. It is also not disputed that the following firearms and ammunition imported by the passenger (petitioner) are in his unaccompanied baggage.

- (i) Pistol CZ 83.32 (1 No.)
- (ii) Rifle 270 (1 No.)
- (iii) Air Guns - 0.177 / 4.5 mm (2 Nos.)
- (iv) Empty pistol magazines (3 Nos.)
- (v) Federal Premium Ammunition (for Rifle (8 x 20 Nos.)
- (vi) Premier Lead Pallets - 0.177 (8 x 500 Nos.)
- (vii) Super H Points 4.5 mm / Ca. 177 (2 x 500 Nos.)

6. A perusal of the order passed by the respondent would disclose that the Government of India, Ministry of Finance (Department of Revenue), vide Circular No. 63/95-Cus, dated 07.06.1995 clarified that one firearm of permissible bore is allowed to be imported by persons transferring their residence to India subject to fulfilment of certain conditions that the said fire-arm shall not be sold, transferred, loaned or otherwise parted with during his life time. In view of the above, the import of the pistol and other ammunition in excess quantity of eligible 50 Nos. in the baggage as detailed above is contrary to the Foreign Trade Policy read with Section 3 of the Foreign Trade (Development and Regulation) Act, 1992 and the provisions laid down under the Baggage Rules, 1988 read with

the Circular referred above. The respondent, while further observing that the above firearms and cartridges imported in contravention as aforesaid are liable for confiscation u/s 111(d) of the Act, and the Passenger (petitioner) is liable for penal action u/s 112(a) of the Act, made the following order:

(i) I confiscate the impugned goods viz. Pistol, Pistol empty magazines (3 Nos.) and ammunition of rifle in excess of a quantity of 50 Nos. valued approximately Rs. 16,600/- imported vide Baggage Declaration BDF No. 578, dated 17.11.2009 u/s 111(d) of the Customs Act;

(ii) I impose penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on the Passenger - Sri Srikanth Puskur u/s 112(a) of the Customs Act, 1962.

(iii) I allow release of Air Guns - 0.177 / 4.5 mm (2 Nos.), Rifle 270 (1 No.) and related ammunition of rifle up to a quantity of 50 Nos. subject to fulfilment of conditions that the said firearms shall not be sold, transferred, loaned or otherwise parted with during life time.

7. However, as averred in the affidavit filed in support of the writ petition, the petitioner's grievance is that the respondent, without appreciating the provisions of Section 125 of the Act, confiscated Pistol and ammunition of rifle in excess of quantity of 50 Nos. , for which he relied on the judgment delivered by a Division Bench of this Court (cited supra). Before taking into consideration the referred judgment, it is necessary to reproduce the provision u/s 125 of the Act, which reads as under:

125. Option to pay fine in lieu of confiscation:

(1) Whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Provided that without prejudice to the provisions of the proviso to Sub-section (2) of Section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under Sub-section (1), the owner of such goods or the person referred to in Sub-section (1) shall, in addition, be liable to any duty and charges payable in respect of such goods.

8. In as much as the provision envisaged u/s 125 of the Act is to the effect that the owner is entitled to the release of goods confiscated on payment of fine and penalty, our attention is drawn to the Orders issued by the Government vide No. 497/57/87/CUS/VI, Ministry of Finance dated 05.01.1988, which permits bringing of two firearms, is extracted hereunder:

Import of firearms is strictly prohibited. However, persons transferring effects on transfer of their residence are entitled to import one firearm subject to the

condition that the same was in the possession and use abroad for a minimum period of one year by the passenger and also subject to the condition that such firearm, after clearance, shall not be sold, loaned, transferred or otherwise parted with for consideration or otherwise, during the life time of such person.

9. In our considered view, the interpretation of the word "persons" in the Ministry of Finance letter dated 05.01.1988 by the Commissioner (Appeals) is contrary to the principles governing interpretation of statutes. The word "persons" is used to mean the natural person, who is coming to India from time to time and the same is also used as opposed to artificial persons since the benefit of transfer of residence is applicable only to natural person. The interpretation given by the authorities that since the word "persons" is plural and not singular it is the policy of the Government of India to allow import of one firearm only to person bringing their personal effects on transfer of residence, is neither logical and reasonable nor is in accordance with the policy. The gun is a personal effect and licence would also be given to a person and not to a group of persons. If only one person is coming from abroad, can it be said that such person is not entitled to import a gun because he does not come under the expression "persons"? The word used is "persons" and not "family". Therefore, in our view, the interpretation adopted by the Commissioner (Appeals) is not correct. In the eye of law, both the husband and wife are independent persons, and therefore, the petitioner is entitled to release of his weapons in terms of the Ministry of Finance letter. Rules 3, 4 and Appendices A and B of the Baggage Rules, 1988 start with the expression "passengers". However, the benefit of the rule is extended to each passenger. The Ministry's letter dated 05.01.1988 has to be read along with Rule 8 of Baggage Rules which are applicable to persons transferring their residence to India, and under it, each person is entitled to the benefit of the rule. Therefore, from the above, it is clear that the word "persons" has to be read along with the expression "passenger and such person" used in the letter. This amply makes it clear that it refers to person coming from abroad on transfer of residence and not family.

10. Further, as per the letter dated 05.01.1988 issued by the Government, Ministry of Finance, the import of weapons is permitted subject to the conditions that the same should be in the possession and use abroad for a minimum period of one year by the passenger and also that such firearm, after clearance, shall not be sold, loaned transferred or otherwise parted with for consideration or otherwise during the life time of such person. In this context, it is to be mentioned here that the petitioner was in possession of the firearms for more than one year as is evident from the averments of his affidavit and the same is not controverted by the respondents.

11. Having carefully analysed the material on record and in view of the relevant portions of the statutory provisions referred above, we are of the considered opinion that the contentions put forth by the Learned Counsel for the petitioner are sustainable, and the judgment delivered by the Division Bench of this Court,

squarely applies to the facts of the present case and is binding on the respondent herein. Hence, we set aside the impugned order dated 21.07.2010 passed by the Commissioner of Customs, Central Excise and Service Tax, (Appeals-II), Hyderabad, and have no hesitation in placing on record that this writ petition may also be disposed of in terms of the order dated 07.02.2002 made in W.P. No. 26829 of 2001 by the Division Bench of this Court, with the following directions:

The respondent-Deputy Commissioner of Customs, is directed to collect fine of Rs. 16,600/- and penalty of Rs. 10,000/-, totalling Rs. 26,600/- as stated in the order dated 23.03.2010, from the petitioner and release his goods viz. Pistol, Pistol empty magazines (3 Nos.) and ammunition of Rifle in excess of a quantity of 50 Nos. , within a period of one week from the date of payment of fine and penalty.

12. Accordingly, the writ petition is disposed of. No order as to costs.