(1978) 04 DEL CK 0012

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 169 of 1978

Tarlok Singh APPELLANT

Vs

The Suprintendent of Customs and Another RESPONDENT

Date of Decision : 06-04-1978

Acts Referred:

Citation : (1979) 15 DLT 183 : (1978) 2 ELT 639 : (1978) 2 ILR Delhi 384

Hon'ble Judges : R.N. Aggarwal, J

Bench : Single Bench

Advocate : C.L. Prem, S.N. Mehta and S.N. Mehta, for the Appellant;

Judgement

R.N. Aggarwal, J.

(1) The relevant facts turn the decision of this revision petition are these : on 7th March 1978 the police intercepted a car bearing registration No. Upi 3031 carrying cloth worth about Rs. 50,000. Mukhtiar Singh, Sagar Singh and Tara Chand who were in the car were arrested; 4th person who was identified as Tarlok Singh driver ran away. During investigation the police found that the cloth had been illegally imported from Triveni Bazar. Nepal. The customs authorities were informed of the alleged seizure.

(2) On 15th March 1978 Mr. M. R. Kathuria, Custom., Inspector (Preventive) made an application to the Magistrate that the accused are reasonably believed to have committed an offence punishable u/s 135 of the Customs Act, 1962 (briefly ""the Act") and that the clothes and the car are liable to be seized under the Act and prayed that the police be directed to hand over the goods Along with the car to the customs authorities for necessary action. The Magistrate called the report of the S. H. O. Karol Bagh and made an order for handing over the goods and the car to the customs authorities, A few days thereafter Tarlok Singh made an application for the release of the Car No. Upi 3031 to him on superdari. This request was opposed by the customs authorities. The learned Magistrate after hearing the parties dismissed the application of Tarlok Singh. Against the

aforesaid order, Tarlok Singh has come in revision.

(3) To appreciate the legal controversy involved in the petition it will be useful to set out the relevant provisions of the Act. The relevant provisions read as follows :

"110. Seizure Of Goods, Documents And THINGS. (1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods: Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer. (2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized : Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Collector of Customs for a period not exceeding six months. *** *** *** 115. Confiscation Of Conveyances (1) *** *** *** (2) Any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal and that each of them had taken all such precautions against such use as are for the time being specified in the rules : Provided that where any such conveyance is used for the carriage of goods of passengers for hire, the owner of any conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine not exceeding the market price of the goods which are sought to be smuggled or the smuggled goods, as the case may be. *** *** *** 124. Issue Of Show Cause Notice Before Confiscation Of Goods, ETC.-No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person-(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty; (b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and (c) is given a reasonable opportunity of being heard in the matter: Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral. *** *** *** 135. Evasion Of Duty Or PROHIBITIONS.-Without prejudice to any action that may be taken under this Act, if any person-(a) is in relation to any goods in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods, or (b) acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believ6 are liable to confiscation u/s 111, he shall be punishable,- (i) in the case of an offence relating to any of the goods to which section 123 applies and the market price whereof exceeds one lakh of rupees, with imprisonment for a term which may extend to five years and with fine : Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than six months; (ii) in any other case, with imprisonment for a term which may extend to two years, or with fine, or with both."

(4) A leading of the above provisions would bring out that if a customs officer duly authorised has reason to believe that any goods are liable to confiscation under the Act he can seize those goods. Section 124 provides that the authority before confiscating the goods shall give a notice in writing to the person concerned informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty. Sub-section (2) of section 100 provides that if no notice is given, as required under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose, possession they were seized. Section 135 provides for punishment for evasion of duty.

(5) Mr. C. L. Prem, learned counsel for the potitioner contended that section 110 only contemplates goods on which duty is payable and that the car used in transporting the goods not covered by section 110 and. Therefore, there is no legal bar to the return of the car on superdari to its owner pending adjudication proceedings u/s 124 of the Act. I do not agree with this contention. Sections 2(14) and 2(22) of the Act define the expressions "dutiable goods" and "goods". The two definitions read as follows :--

2(14) "dutiable goods" means any goods which are chargeable to duty and on which duty has not been paid; 2(22) "goods" includes (a) vessels, aircrafts and vehicles; (b) stores; (c) baggage; (d) currency and negotiable instruments; and (e) any other kind of moveable property;

The words employed in section 110(i) and any goods and this expression would obviously include both dutiable goods'' and '""goods" as defined in section 2(22) Section 115(2) clearly provides than any conveyance or animals used as a means of transport in smuggling the goods or in the carriage of any smuggled goods shall be liable to con- fiction unless the owner of the conveyance or animals proves that it was so used without his knowledge or connivance. The allegation in the case in hand is that cloth was smuggled from Nepal and it was being transported in car No- Upi 3031. On the allegation made, there can be no doubt, that the customs officer had the authority to seize the car u/s 110. After the seizure under sub-section (1) of section 110 the authority has to follow the procedure laid down in section 124. In case a notice is issued to the petitioner or to any other person as required by clause (a) of section 124 it will be for the petitioner to satisfy the authority that the car was used in transporting the smuggled goods without his knowledge or connivance. If no notice is given as provided under clause (a) of section 124 then the consequences as laid down in section 110(2) will follow. The above is the scheme of the Act in a case where an action is taken u/s 110(1).

(6) Mr. Prem in support of his contention relied on the Deputy Superintendent, Customs, Preventive, West Bengal Vs. Sitaram Navsaria and Another, . The facts of the cited case are that certain categories of goods including mostly ball bearing and steel files of foreign origin, which were believed to be smuggled property, were seized by the police from party No. 1 therein. In another case (Criminal Revision No. 988 of 1965) the police had seized a lorry loaded with bundles of cinnamon and cloves of foreign origin from the custody of respondents Nos. 1, 2 and 3 therein. Party No. I was the driver of the lorry and party No. 5 was the owner thereof. The seizures in both the cases were made by the police u/s 54 Criminal Procedure Code ./411 Indian Penal Code . While the case was pending for investigation the customs authorities made an application to the Chief Presidency Magistrate praying for a direction on the Investigating Officer concerned to hand over the seized goods to the customs authorities at the conclusion of the investigation or trial to facilitate proceedings under the Customs law against the concerned offenders. The police ultimately submitted final reports in both the cases and the Chief Presidency Magistrate, after hearing the parties made an order that the seized goods be returned to the accused and the customs authorities may, if necessary, thereafter make there own independent seizure from the person who takes delivery of the goods without further reference to the court. The above order was challenged by the customs authorities by a petition in the High Court. A Single Judge of that Court held as under:

"The Customs Authorities, under S. 110 of the Customs Act 1962 have the unfettered power of seizure of the goods. Where the Customs Authorities by virtus of that power went to make the seizure but the goods concerned being in the custody of the Court, could not or did not want to seize the same without the Court''s order, in such a case all that the Court need see if it wants to make an order u/s 523 of Criminal Procedure Code . in favor of Customs Authorities is whether the power that they want to exercise is vested in them by law and if it is so vested, the Court need not enter into the question of the merits of the materials which may provide the basis for the belief that the goods concerned are contraband. That is a matter which the Customs Authorities would have to prove by evidence in the proceeding that they would have to start if they want to make an order of confiscation. There is also no question of surrendering the Court''s discretion to the (opinion of the Customs Authorities because all that the Court has to see in the matter of disposal of property u/s 523 Criminal Procedure Code . is that the order that is passed is an appropriate order in the facts and circumstances of the case. There are practical difficulties in the matter of refusing to act up to the prayer made by the Customs Authorities in the exercise of powers granted to them under the Act. Under the Customs Act itself, the Customs Authorities would have the power given to them in section 110 to seize the goods from the custody of the police and there may be a conflict between the Customs Authorities eager to exercise their powers and the police authorities anxious to carry out the orders of the Court. Then again if under the orders of the Magistrate the Customs people have to make the seizure from the parties concerned after they have got back their goods from the police, it may as well be that they will never come to get back their goods and to face the consequences thereof and that again would frustrate the purposes of the Customs Act."

As regards the lorry the learned Judge made the following order :

" THERE is a lorry seized in the case out of which Criminal Revision Case No. 988 of 1965 has arisen. It may or may not be liable the confiscation under sec. 115 of the Customs Act. The Customs Authorities will have to initiate a proceeding if they want to confiscate the lorry. There is no reason why pending disposal of the proceeding the lorry should be detained. It may be returned to the registered owner on a bond aid on terms."

(7) MR.PREM relying on the above observations contended that the decision in Deputy Superintendent, Customs (supra) is on all fours of the case in hand and the same order may be made in respect of the car. There are no clear reasons given in the cited authority for returning the lorry. It is possible that in that case no proceedings were initiated for the seizing of the lorry. I have earlier discussed the various provisions of law bearing on the point and, to my mind, there appears to be no escape from the conclusion that once the seizure is made u/s 110(1) of the Act then the other formalities to which I have adverted, must follow. There is no provision in the Act for handing over the seized property to the owner pending adjudication u/s 124.

(8) Mr. Prem further drew my attention to the following authorities : Deo Dutta Sharma v. Manohar Lal & Ors. 1974 P.L.R. 76 . Charan Singh v. Gehl Singh & another 1974 P.L.R. 76 . State of Madhya Pradesh Vs. Azad Bharat Finance Co. and Another, , I have gone through the cited authorities and, in my view, they are not applicable to the case in hand.

(9) Mr. Prem next contended that the seizure u/s 110(1) was not by a duly authorised officer and Therefore, there is no legal and valid seizure. There is nothing on record to support the above contention. Section 2(34) of the Act defines the expression "proper officer" and the definition reads as under :

"2(34) "proper officer", in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Collector of Customs;"

The application to the Magistrate for seizure was made by Mr. M. R. Kathuria, Customs Inspector (Preventive). There was no plea before the Magistrate that the applicaation was not by a duly authorised officer. This contention of Mr. Prem is without merit.

(10) Mr. Prem lastly contended that the car was given by the petitioner to

Mukhtiar Singh and others for use in a wedding and that if the car is not given on superdari to the petitioner it will be reduced to a junk after few years and the petitioner would be put to serious loss. This apprehension of the petitioner is not correct. As already stated, the customs authorities are under a legal obligation to take proceedings turn confiscation within six months, failing which the seized goods have to be returned to the person from whose possession they were seized. The measures contemplated under the Act arc stringent and obviously they have been introduced with the object of proventing smuggling. For the reasons stated I find no merit in the petition and it is dismissed.

