

(1960) 04 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 217 of 1960

Union of India (UOI) and Another

APPELLANT

Vs

Om Parkash Ram Dass Khatri

RESPONDENT

Date of Decision : 01-04-1960

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Foreign Exchange Regulation Act, 1947 — Section 23A
Income Tax Act, 1961 — Section 23(3), 66(2)
Sea Customs Act, 1878 — Section 167, 167(8), 178A, 19

Citation : (1960) 04 P&H CK 0002

Hon'ble Judges : D. Falshaw, C.J;A.N. Grover, J

Bench : Division Bench

Advocate : C.D. Dewan, Deputy Advocate General, for the Appellant; K.S. Thapar, for the Respondent

Judgement

D. Falshaw, C.J.—These cross appeals filed under Clause 10 of the Letters Patent have arisen in the following manner.

Om Parkash, one of the Appellants, filed a petition under Article 226 of the Constitution challenging the order of Mr. B.D. Deshmukh, I.R.S., Collector of the Central Excise and Land Customs. New Delhi, dated the 25th of August, 1958, by which about 174 1/2 tolas of gold was confiscated u/s 167(8) of the Sea Customs Act of 1878 read with Section 19 as made applicable by Section 23-A of the foreign Exchange Regulation Act of 1947 and else a penalty of Rs. 5,000/- was imposed on Om Parkash.

2. The case came up for hearing before Dulat J. who held on the strength of the decision of a Division Bench if this Court in Gian Chand v. State of Punjab Criminal Revn. No. 1566 of 1958 D/- 2-3-1960 (Punj) that no penalty in excess of Rs. 1,000/- could be lawfully Imposed. He found that Om Parkash had filed an appeal against the order of the Collector before the Central Board of Revenue, which had refused to hear the appeal until the penalty was paid, and in the

circumstances he was of the opinion that Om Parkash should pursue his normal remedy before coming to this Court, the hardship involved in such a course being greatly reduced in consequence of the subsequent reduction which was necessary in the amount of the penalty. He consequently declined to interfere at that stage and dismissed the petition.

3. Against this order appeals have been filed by both the Union of India and the Collector of Customs on the one hand and by Om Parkash on the other. The case of the former is that the Imposition of a penalty of Rs. 8,000/- was perfectly legal. The contention of Om Parkash is that this Court ought to have interfered with what was on the face of it a bad order even in spite of holding that the penalty imposed could not exceed Rs. 1,000/-

4. The question regarding what amount of penalty can lawfully be "Imposed in a case of this kind is now settled by the decision of the Supreme Court in *Ranchhoddas Atmaram Vs. The Union of India (UOI)*, in which it has been held that under item 8 in Section 167 a penalty in excess of Rs. 1,000/- can be imposed and an order imposing such a penalty is not open to any challenge where the penalty does not exceed three times the value of the goods concerned it is not contended in the present case that a sum of Rs. 5,000/- exceeds three times the value of the gold. In fact it is obviously much less.

5. Such being the case there was clearly no justification for this Court refusing to interfere simply on the ground that the hardship involved in the Petitioner's pursuing his normal remedy was reduced by the decision that the penalty, which had to be deposited as a precondition to the hearing of his appeal, could not exceed Rs. 1,000/-.

6. On the merits the facts are that Om Parkash is the proprietor of a firm Messrs. Jawindamal Ramdas of Jullundur and the Customs authorities received information that he would be travelling to Delhi by the Frontier Mail which arrived on the morning of the 13th of October 1956, and that he would be carrying contraband gold with him. A party was organised to keep watch at the Station at Delhi and when the train arrived Om Parkash was pointed out by an informer. He was followed from the Railway Station to the refinery of Messrs R.R. Chander Bhan, Kacha Bagh, Delhi, where he was apprehended and the quantity of gold amounting to about 174 1/2 tolas which he was handing over to the refinery was seized under the alleged reasonable belief that it had been imported into India in (sic) of law.

7. Thereafter on the 16th of October 1956 a notice was issued to Om Parkash calling on him u/s 178-A of the Sea Customs Act to prove that the seized gold was not smuggled, failing which he was asked to show cause why the gold should not be confiscated and why further penal action should not be taken against him u/s 167(8) read with Section 19 as made applicable by Section 23-A of the Foreign Exchange Regulation Act.

8. In reply to this notice Om Parkash alleged that the gold was not smuggled and

that it was part of the stock lying with his firm and purchased from various persons in the course of his regular and longstanding business of dealing in gold. A personal hearing was granted and on the 15th of April 1957 he produced his evidence including account books in an effort to establish that the gold had been purchased by him in the normal course of his business and that it was not smuggled. His evidence was not accepted by the Collector who passed the impugned order one year and four months later in August 1958.

9. One passage in the impugned order is particularly assailed as in flagrant contravention of the principles of natural justice which are bound to be followed by a quasi-Judicial tribunal such as a Collector adjudicating on a matter of this kind. This passage furnishes the main reason why the accounts produced by Om Parkash were rejected as a piece of evidence in support of his allegation that the gold was not smuggled. The passage reads:

Another device with which the smugglers try to prove their bona fides is to keep some accounts to show the genuine character of the sale and purchase of the gold. They make entries of some names of persons from whom the purchases are said to have been made and like wise in the sales also. On a discreet enquiry by the Department it was revealed that the account-books are fictitious and are calculated to mislead the authority. In this case also detailed investigation has been made which revealed that most of the purchases have been shown against the near relatives of the partners of the firm and other near friends who are active members of gold smuggling business. This shows that their account-books are not worthy of placing any credence.

10. The Petitioner's case is that the so called discreet enquiry and detailed investigations were carried, out by the Department entirely behind his back and without his knowledge, that he was not given any opportunity to meet or contradict the report of the person or persons who conducted these investigations. This allegation is contained in paragraph 6 of the petition as follows:

That the Department had no evidence to show that the gold was smuggled and in rejecting the books of account have relied upon material collected at his back and not put to him at the time of the enquiry.

the reply to this in the affidavit of the Collector cannot be regarded as very satisfactory it reads:

2. As regards paragraph No. 6 of the petition it is submitted that the Department had in its possession (sic) to establish to their satisfaction that the gold which was seized from the Petitioner had been smuggled. On that basis the show cause notice was issued to the Petitioner on the 16th of October 1958, a copy of which is annexure "A". The Petitioner entered his explanation to the show cause notice, a copy of that is annexure "B". The Petitioner was thereafter afforded all reasonable and adequate opportunity to produce evidence in support of his case. The counsel who appeared on his behalf was also heard. The account-books

produced by the Petitioner were duly examined. Ultimately on the assessment of the evidence it was found that the Petitioner had smuggled the gold and was consequently liable for the action which was taken against him. The allegation that the material collected at the Petitioner's back was used against him is vague and cannot be therefore answered.

11. A replication was filed in this case by Om Parkash of which paragraph 6 reads:

That at no stage of the enquiry the Department or the Respondent--Collector of Customs, put any evidence in his possession or circumstances to the Petitioner to meet and show that on the basis of that evidence or circumstance the gold was not smuggled that evidence or circumstance has not been indicated in the written statement or the impugned order. There has been no assessment of evidence for no evidence of any kind on behalf of the Department was led before the Collector In the presence of the Petitioner" nor "put to him. Even the norms of judicial procedure have not been followed, for reliance as the show cause notice shows was on Section 178-A of the Sea Customs Act. This is wholly illegal and the Respondent has not conducted himself as a Judicial tribunal.

This plea was further amplified in paragraph 9.

12. A further reply was also filed by the Collector of which paragraph 6 reads:

Regarding paragraph No. 6 it is stated that the proceedings under the Sea Customs Act are not governed by the Code of Criminal Procedure. It is not necessary that the evidence or circumstances be put to the Petitioner. The impugned order was made after giving thorough consideration to the merits of the case. The Petitioner was given full opportunity to defend his case in accordance with the principles of natural justice, that is, a Show cause memo was issued, reply to the show cause memo was received, the Petitioner through his counsel was afforded an opportunity to be heard in person and an order was passed after giving full consideration to the merits of the case.

The following passage occurs in paragraph 9:

The observations in the adjudication order referred to by the Petitioner are based on evidence with the Department. The Petitioner was given full opportunity to defend his case. The Petitioner placed reliance on his account-books which on verification were found to contain fictitious entries to the satisfaction of Respondent. There is no provision under the Sea Customs Act that such verification be conducted in the presence of the Petitioner. As already submitted in para 6 above all the canons of natural justice were complied with before passing the order.

13. If any authority is needed for the proposition that a Collector of Customs in an enquiry of this kind must comply with the fundamental principles of natural Justice it is to be found in *Amba Lal v. Union of India* AIR 1961 SC 264 in which it has been held that in such a situation, though the provisions of the Code of

Criminal Procedure and the Evidence Act may not apply except so far as they are statutorily made applicable, the fundamental principles of criminal jurisprudence and of natural justice must necessarily apply. However, no such authority appears to be really necessary since it has been repeatedly asserted by the Collector in the present case that he has complied with all the canons of natural justice before he passed the order, thereby conceding the necessity for him to do so.

14. It would seem, however, that his idea of what constitutes natural justice is somewhat strange. He at first evaded answering the allegation that the material on the strength of which he rejected the Petitioner's account books was obtained behind the Petitioner's back by saying that the allegation was too vague to be capable of being answered, and then at a later stage he adopted the position that it was not necessary to disclose to the person who was called on to "show cause against confiscation of the gold and imposition of a penalty the material on which he was proposing to base his decision, namely the information obtained by "discreet enquiries" and "detailed investigation" which showed that the persons from whom the Petitioner ostensibly purchased the gold as shown in his account-books were not only folds and relations, but also persons themselves connected in the business of smuggling gold. It seems to me that it is a legitimate inference from the terms in which the offending passage in the order is couched, together with the fact that there was a lapse of a year and four months between the hearing of which the Petitioner was allowed to produce his evidence and his counsel was heard and the passing of the order, that these investigations were secretly carried out sometime between the actual hearing and the date of the final order.

15. Of course the onus of proving that gold which has been seized in circumstances similar to those in the present case lies on the person from whom the gold is seized to prove that it is not smuggled, and if he fails to produce any evidence or produces only flimsy evidence which can be summarily rejected, the confiscation of the gold and the imposition of the penalty can be ordered forthwith. This is not so in the present case, however, and it is clear that the oral and documentary evidence produced by Om Parkash was of such a nature that it could not be summarily brushed aside by the Collector, who felt it necessary to have secret, which I take to be the real meaning of the word "discreet" used by the Collector, and detailed investigations carried out before he could come to the conclusion that Om Parkash had not discharged the onus laid on him. In other words, the decision of the Collector was based to a considerable extent on information secretly obtained without either the knowledge of Om Parkash, that any such information was being obtained, or any intimation of what that information was when it had been collected. I do not for a moment mean to suggest that the ultimate conclusion of the Collector was not justified, but it seems to me that the manner in which it was reached involved the violation of a fundamental principle of natural justice.

16. There does not appear to be any reported decision in a case exactly of this kind, but there are certain observations of the Supreme Court in an Income Tax case in which the principle involved is somewhat similar. This is the decision in *Dhakeshwari Cotton Mills Ltd. v. Commissioner of Income Tax West Bengal* 1954-26 ITR 775 : (S) AIR 1955 SC 65 in which five learned Judges heard an appeal under Article 136 of the Constitution against the dismissal by the High Court of an application u/s 66(2) of the Income Tax Act. The learned Judges held that the correct rule of law had been stated by a Full Bench of the Lahore High Court in (1944) 12 ITR 393 In that case It was held.

While proceeding under Sub-section (3) of Section 23, the Income Tax Officer, though not bound to rely on evidence produced by the Assesses as he considers to be false, yet if he proposes to make an estimate in disregard of that evidence, he should in fairness disclose to the Assessee the material on which he is going to found that estimate; and that in case he proposes to use against the Assessee the result of any private inquiries made by him, he must communicate to the Assessee the substance of the information so proposed to be utilized to such an extent as to put the Assessee in possession of full particulars of the case he is expected to meet and that he should further give him ample opportunity to meet, it.

17. As I have said the underlying principle in the present case is somewhat similar. It seems to me that the danger of allowing these matters to be decided in the manner in which the Collector has decided the present case is that although the evidence produced by the person involved in the present case may not have been particularly convincing, it is quite conceivable that perfectly good evidence produced by some other person in similar circumstances might be thrown out by a Collector on the basis of similar secret and one-sided inquiries made after the conclusion of the presentation of the case of the person affected, and in my opinion it is necessary in such cases that if the evidence of the person affected is not to be summarily rejected, it should only be rejected after he has been given at least some inkling of the strength and nature of the case against him.

18. In the circumstances while technically accepting The appeal of the authorities to the extent of setting aside the decision of the learned Single Judge restricting the penalty to Rs. 1,000/-. I would accept the appeal of Om Parkash and set aside the order of the Collector, who may, however, take up the matter against and decide it afresh in the light of the above remarks. The parties may be left to bear their own costs.

Grover, J.

19. I agree.