

(1964) 09 KL CK 0016
In the High Court Of Kerala
Case No : O.P. No. 2347 of 1963

V. Ramananda Prabhu

APPELLANT

Vs

Collector of Customs and Central Excise, Cochin

RESPONDENT

Date of Decision : 17-09-1964

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 124

Citation : AIR 1965 Ker 286 : (1965) CriLJ 773

Hon'ble Judges : K.K. Mathew, J

Bench : Single Bench

Advocate : P. Subramanian Poti and S.A. Nagandran, for the Appellant; M.U. Isaac, for the Respondent

Final Decision : Allowed

Judgement

K.K. Mathew, J.—The prayer in this writ petition is to call for the records leading to Ext. P. 8 order and for quashing that order by a writ of certiorari or other appropriate writ or direction so far as it relates to the imposition of the penalty of Rs, 6,500/- on the petitioner u/s 112(b) of the Customs Act, 1962, hereinafter called the Act.

2. The petitioner is a merchant-doing business in "stationery in Broadway, Ernakulam, under the name and style of A. R. Prabhu and Bros. The Inspector of Customs and Central Excise, Cochin, made a search of the petitioner's shop from 11 A. M. to 4 P. M. on 31-5-1963 and seized 12 items of articles and removed them to the Customs House after preparing a mahazar, a copy of which is marked Ext. P. 1. The articles so removed are articles like pencils, pen refills, etc. These were imported goods purchased by the petitioner through the normal trade channels and the purchases were supported by bills and invoices. On the same day the Inspector of Customs and Central Excise made a search of the petitioner's residence also. A pilot pen, a magic brain calculator and 10 packets of 7 O'Clock blades were seized from the residence and they were also removed

to the Customs House after preparing a mahazar, a copy of which is-marked as Ext. P. 2. On the very same day the Inspector of Customs and Central Excise, demanded the petitioner and his brother to surrender the watches worn by them on the ground that the said watches were liable to confiscation under the provisions of the Act, and the Import Trade Control Regulations. These watches were also seized and removed to the Customs House after preparing a mahazar, a copy of which has been marked as Ext. P. 3. On the same day the Inspector of Customs and Central Excise also conducted a search on one R. Vasudeva Prabhu at a place near the eastern Gate of the T. D. Temple and seized 62 watches from his custody. Subsequently the petitioner was asked to produce the invoices and all other relevant documents to show that the goods seized under Exts. P. 1 and P. 2 were lawfully purchased by him. Ext. P. 14 is a copy of the memo dated 14th June, 1963 asking the petitioner to forward the invoices and the bills. The petitioner produced these documents and after a detailed investigation of the matter the Assistant Collector of Customs was satisfied that the articles seized under Exts. P. 1 and P. 2 mahazars from the shop and the residence of the petitioner were not liable to confiscation. So by a memo dated 11th November, 1963, the petitioner was informed that all the items seized under Exts. P. 1 and P. 2 excepting two plastic watch covers will be released to the petitioner and his brother. A notice to that effect was issued, a true copy of which is filed as Ext. P. 5 in this case.

3. According to the respondent the watches seized from the possession of R. Vasudeva Prabhu really belonged to the petitioner and his brother and they were really kept in their residence, and that it was while they were being removed by R. Vasudeva Prabhu from their residence at the instance of the petitioner that they were seized by the customs authorities. R. Vasudevo Prabhu gave a statement to the customs authorities to the effect that he was asked by the petitioner to remove the watches from the residence, and that it was while he was removing them that the customs authorities intercepted him and took the watches from him. The petitioner also gave a statement to the effect that the watches were really removed from their residence by R. Vasudeva Prabhu at his instance and that Vasudeva Prabhu was a relation of the petitioner and his brother. Subsequently the Assistant Collector of Customs issued a show cause notice Ext, P. 6, stating the circumstances under which the watches were seized from the possession of R. Vasudeva Prabhu, and also incorporating the statements made by the petitioner as well as R. Vasudeva Prabhu and asking the petitioner and his brother to show cause why these goods should not be confiscated and a penalty imposed. The notice also specified the time for making the representation, namely 7 days from the receipt of the notice and also the person before whom it is to be made, namely the Assistant Collector of Customs. The petitioner and his brother filed a joint statement, Ext. P. 7, and in that they denied their complicity, in the offence and also stated that they have nothing further to add by way of personal hearing. After the receipt of this explanation the Collector of Customs passed the order, which is impugned in this case,

confiscating the watches and imposing a penalty of Rs. 6,500/- each upon the petitioner and his brother Viswanatha Prabhu u/s 111(d) & 112(b) of the Act, read with Section 3 (2) of the Import and Export Control Act, 1947. By the order the Collector also imposed a penalty of Rs. 250/ on R. Vasudeva Prabhu.

4. The contention raised by the petitioner in this writ petition is that the order of the Collector of Customs and Central Excise, imposing the penalty of Rs. 6,500/ on him was unwarranted. In support of this contention petitioner's counsel has submitted before me five points: (1) that the show cause, notice was issued by the Assistant Collector of Customs, and that notice only states that the petitioner should appear before him and not before the Collector; (2) that the Collector of Customs before he passed Ext. P. 8 order did not give an opportunity to the petitioner for being heard before him and, therefore, the order was passed in violation of the principles of natural justice; (3) that the presumption relied on by the Collector in his order Ext. P. 8 that the goods seized were smuggled goods was not available in this case as the 82 watches were seized not from the possession of the petitioner, but from the possession of R. Vasudeva Prabhu; (4) that the order does not show what is the specific offence which was committed by the petitioner; and (5) that the quantum of the penalty is excessive and arbitrary.

5. u/s 124 of the Act a show cause notice had to be given in writing informing the petitioner of the grounds on which it was proposed to confiscate the goods and impose the penalty and giving him an opportunity to make representations within such reasonable time as may be specified in the notice against the grounds of confiscation and imposition of penalty. It was also necessary that the petitioner should have been given a reasonable opportunity of being heard in the matter. It was submitted by Mr. Subramanian Potti, appearing for the petitioner that Ext. P. 6 notice was issued by the Assistant Collector of Customs, but that the adjudication to confiscate the watches and to impose the penalty was made by the Collector as the value of the goods confiscated, exceeded Rs. 10,000/- and as the penalty proposed to be levied exceeded Rs. 2,000/, and, therefore, the procedure adopted was illegal. According to him the show cause notice should have been issued by the Collector himself or some person acting under his authority and on his behalf and that the notice should have stated that the representation was to be made before the Collector. Exhibit P. 6 notice does not contain any statement that the petitioner should appear before the Collector for being heard. It only directed the petitioner to appear before the Assistant Collector of Customs and submit his representations. It was therefore argued that no reasonable opportunity was given to the petitioner to make his representation or for being heard in person before the Collector who passed Ext. P. 8 order.

6. On the other hand, it was submitted by Mr. Isaac appearing for the Department that in the explanation submitted by the petitioner and his brother, namely Ext. P. 7 there was no demand for a personal hearing, and that it was

stated specifically by the petitioner and his brother in Ext. P. 7 that they do not require a personal hearing and that they have nothing more to submit except the representations made in that document. This circumstance was relied on by counsel to show that the petitioner was not prejudiced because there was no opportunity for being heard before the Collector, as he himself did not want a hearing before anybody, and that he had waived the right which he would otherwise had for a hearing before the Collector.

After considering the arguments of counsel I am inclined to hold that the show cause notice given in this case was improper. u/s 124 of the Act, I think, the show cause notice should have been given by the Collector or by a person acting under his authority and on his behalf, and should have directed the petitioner to submit his representations before the Collector and to appear before him, if the petitioner wanted personal hearing. The representation has to be made before the adjudicating authority and the personal hearing must also be before him. Exhibit P 6 notice was defective in this respect namely that it only indicated that the petitioner should appear with his evidence before the Assistant Collector of Customs. The petitioner's counsel relied on the ruling of the Supreme Court in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, at p. 327 for the proposition that the hearing must be before the person who is to adjudicate on the controversy. By Ext. P-7 the petitioner had waived the right of personal hearing before the Assistant Collector of Customs. That does not mean that he had waived his right of being heard by the adjudicating authority, namely the Collector. I think the principles of natural justice required that the petitioner should have been given an opportunity of being heard before the authority making the adjudication. At any rate I am of opinion that Section 124 of the Act required that the petitioner should have been given an opportunity of being heard before the Collector, who has made the adjudication. As no such opportunity was given I am inclined to think that there has been a miscarriage of justice.

It was contended by Mr. Issac that by Ext. P-7 the petitioner had waived his right to a hearing, before the Collector also. I do not think so. The petitioner might have decided not to appear before the Assistant Collector for the reason that the limit of penalty which the Assistant Collector is competent to impose is Rs. 2,000 and the petitioner might have been willing to pay that amount; but if the petitioner had been told that the adjudication was going to be made by the Collector that would have given him notice that the penalty which the Collector might impose would exceed Rs. 2000 and therefore he would have thought it worthwhile to contest the matter, and would have claimed a personal hearing also before the Collector. The complaint of the petitioner that he had been denied an opportunity of being heard before the Collector appears to me well-founded. The question whether that denial has resulted in any substantial prejudice appears to me to be irrelevant.

In Annamunthodo v. Oilfield Workers' Trade Union, 1981 3 All E R 621, Lord

Denning, speaking on behalf of the Judicial Committee of the Privy Council, said :

"Counsel for the respondent union did suggest that a man could not complain of a failure of natural justice unless he could show that he had been prejudiced by it. Their Lordships cannot accept this-suggestion. If a domestic tribunal fails to act in accordance with natural justice, the person affected by their decision can always seek redress in the-courts. It is a prejudice to any man to be denied justice. He will not of course, be entitled to damage if he suffered none. But he can always ask tor the-decision against him to be set aside."

I think the same principle would apply in the case of an adjudication by a quasi-judicial authority. In these circumstances, I quash that part of Ext. P. 8 order which imposes the penalty on the petitioner. It is open to the Collector of Customs, to take proceedings from the stage of the show cause notice, and after issuing a proper show cause notice and giving an opportunity to the petitioner of being heard, to pass the appropriate order.

7. In the view I have taken, it is unnecessary to deal with the other questions argued by the petitioner"s counsel,

8. The writ petition is allowed to the extent indicated. I make no order as to costs.