M. Nagaraj and anr. Vs. the Controller of Customs and Central Excise, Bangalore

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Court : Karnataka

Decided On : Dec-13-1977

Reported in : AIR1978Kant83; 1978(1)KarLJ110

Judge : K.S. Puttaswamy, J.

Acts : Customs Act, 1962 - Sections 115(2), 128 and 142; Constitution of India - Article 226

Appeal No. : Writ Petn. No. 7836 of 1977

Appellant : M. Nagaraj and anr.

Respondent : The Controller of Customs and Central Excise, Bangalore

Advocate for Def. : U.N. Narayana Rao, Sr. Central Govt. Standing Counsel

Advocate for Pet/Ap. : J. Jeshtmal, Adv.

Judgement :
ORDER

1. Petitioner No. 1 is the transferee of an Ambassador car bearing Registration No. MYO 1605 that was originally owned by petitioner No. 2. As the said transfer has no bearing and as the interests of the petitioners are common, I will refer to them

as petitioner in the course of my order.

2. In connection with the alleged smuggling activities of petitioner No. 2, the Central Excise Authorities acting under the Customs Act of 1962 (Central Act No. 52 of 1962) (hereinafter referred to as 'the 1962 Act') instituted proceedings against him for seizure of Metallic yarn and Fabrics of foreign origin and a car bearing Registration No. MYO. 1605. In order No. C. No. VIII/10-11-12/74 cus. O. R. 3-9/ 74) dated 28-2-1977 issued on 28/29-6-1977, the Collector of Central Excise, Bangalore, inter alia directed the confiscation of car bearing Registration No. MYO. 1605 and its redemption by the petitioner on payment of a fine of Rs. 5,000/- under S. 115(2) of the Act. In this Writ Petition I am concerned only with the release of Car No. MYO. 1605. It is necessary to set out the operative portion of the order of the Collector for a proper understanding and determination of the case and the same reads thus:-

'Accordingly ordered as follows:-

(1) I order the outright confiscation of 6,210 bobbing of metallic yarn, 4,361 yards, 17.40 metres and 6 tagas of synthetic fabrics of foreign origin totally valued at Rs. 2,05,630/- under S. 111(d)/111(p) of the Customs Act, 1962.

(2) I also order confiscation of Car MYO 1605 now in departmental custody and Car MYQ. 4345 which was released provisionally to its owner through B. Srinivas and was not produced before me for adjudication under S. 115(2) of the Customs Act, 1962. In lieu of confiscation, the owner is permitted to redeem the Car MYO-1605 on payment of a fine of Rs. 5,000 (Rupees Five thousand only). The -said fine now adjudged may be adjusted out of the security deposit of Rupees Rs. 10,000 (Rupees ten thousand only) and the car be restored to the owner if he so desires. The car bearing registration No. MYQ-4345 having not been produced before me in terms of the conditions of Bond, I order appropriation of the cash Security in a sum of Rs. 5,000/- (Rupees five thousand only) deposited by the party.

(3) I further order outright confiscation of Indian Currency amounting to Es. 10,000 (Rupees ten thousand only) seized from Venkatesh, under Sec. 121 of the

Customs Act, 1962.

(4) I also impose the following personal penalties on the undermentioned persons under S. 112(b)(i) of the Customs Act, 1962.

1. B. Srinivas. Rs. 1,00,0()0/-'

(Rupees one lakh only)

2. B. Venkatesh. Rs. 1,00,000/-'

(Rupees one lakh only)

3. As can be seen from para 2 of the order the petitioner had already deposited a sum of Rs. 5,000/- as security deposit and the same has been ordered to be adjusted towards the redemption fine ordered by the Collector for the release of the car. Evidently to obtain the benefit of para 2 of the order of the Collector, the petitioner formally exercised the option for redemption of the car by a letter addressed to him on 7-7-1977 (Exhibit C). After exercising the option on 7-7-1977, the petitioner who had become entitled for the return of the car moved the Collector of Central Excise and his subordinates for the return of the car. As the collector did not comply with the demand, the petitioner has approached this Court under Art. 226 of the Constitution for a Mandamus to the Collector to release and restore car bearing Registration No. MYO 1605 forthwith.

4. In order to decide the claim of the petitioner, it is necessary to determine the legal effect of the order D/-28-2-1977 of the Collector of Central Excise in so far as it relates to the Ambassador Car bearing Registration No. MYO 1605. So far as the car is concerned, the Collector's order is an independent order and is clearly severable from the other orders made by him against the petitioner. It is in way dependent on the other orders passed by the Collector like the confiscation of bobbins of metallic yarn, synthetic fabrics or the levy of personal penalty on the petitioner. Secondly the petitioner has been permitted to redeem the car on payment of a redemption fine of Rs. 5,000/- which admittedly has been complied by him in all respects. On the exercise of the option and the payment of redemption fine, the petitioner has become the absolute owner of the car and

therefore he became entitled for its return also from the Collector notwithstanding the failure to pay the personal penalty imposed on him or any other proceeding pending against him or by him before any other authority.

5. As the Collector did not respect and implement his own order and his subordinates did not comply with his order, the petitioner has been compelled to approach this Court for relief under Article 226 of the Constitution.

6. In my view, there was no justification whatsoever for the Collector or his subordinates for not returning the car to the petitioner when once he had become the absolute owner and was entitled for its return under the very order of the Collector, Shri U. L. Narayana Rao, learned counsel for the respondent, urged that the petitioner had filed an appeal challenging the order of the Collector before Central Board of Excise and Customs, New Delhi, and therefore he was not entitled for the return of the ear and in any event I should refuse to exercise my power under Article 26 of the Constitution. Shri Jeshtmal appearing for the petitioner admitted that the petitioner has filed an appeal challenging the seizure of articles, imposition of penalty and the order of confiscation of car passed by the Collector. But he contended that the same does not in any way disentitle the petitioner for seeking relief for the release of the car from the Collector of Central Excise or from Ibis court. In this appeal before the Central Board of Excise and Customs, the petitioner, it is true, has challenged the confiscation of the car. In case he succeeds in that challenge before the Central Board of Excise and Customs, he will undoubtedly be entitled for the return of the car. Assuming that the petitioner does not succeed in his appeal, even then also he is entitled for the return of the car. In this case, the petitioner is depending on the very order of the Collector and the fulfilment of the terms thereof by him to claim relief before this court, In my view, the petitioner is not pursuing parallel remedies one before the Central Board of Excise and Customs and another before this court for one and the same relief and therefore there is no merit in the contention of Shri U. L. Narayana Rao that I should decline to exercise my discretion in favour of the petitioner.

7. Shri U. L. Narayana Rao, learned counsel for the respondent urged that proceedings for attachment and disposal of car bearing registration No. MYO. 1605 under S. 142 of the 1962 Act are pending and therefore I should not exercise my discretion in favour of the petitioner. Shri Jeshtmal, learned counsel for the petitioner, has produced the show cause notice dated 28-11-1977 received by the petitioner with a memo. From a reading of the show cause notice, it is clear that the Assistant Collector of Central Excise, III Division, Bangalore, has only issued a .show cause notice for non-payment or the personal penalty imposed against the petitioner, and that there is no attachment of the car subsisting or any further order for the disposal of the car under S. 142 of the 1962 Act. In my view, it would be unjust to hold up these proceedings to eligible the Assistant Collector of Central Excise to complete his proceedings under S. 142 of the 1962 Act.

8. As the petitioner is clearly entitled for the return of his car and that the Collector of Central Excise has illegally and without any justification has not released the same for an unreasonably long period, he is entitled for a writ in the nature of mandamus for the return of the car. I therefore, direct the issue of a writ of mandamus to the respondent for the release of the car within three days from the date of receipt of the order/ Writ of this court.

9. Rule made absolute. Petitioner is entitled to his costs. Advocate's fee Rs. 250/.

10. Writ petition allowed.