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Court : Delhi

Decided On : Feb-26-1973

Reported in : 1973RLR197

Judge : B.C. Misra, J.

Acts : Sea Customs Act - Sections 178

Appeal No. : Civil Writ Appeal No. 165D of 1965

Appellant : Narotam Das

Respondent : Union of India

Advocate for Pet/Ap. : M.L. Rawal,; K.L. Mehra,; Y. Dayal,;

Judgement :

B.C. Misra, J.

(1) This writ petition is directed against an order of the Central Government dated 23rd November, 1964 by which it has dismissed the revision and maintained the order of the Central Board of Revenue dated 13th January, 1964 dismissing the appeal of the petitioner against the order of the Collector of Customs. dated 31st May, 1961, finally maintaining the order of confiscation of the gold in dispute and imposition of personal penalty on the petitioner. The petitioner Narotam Dass died during the pendency of this writ petition and is represented by four sons and one

daughter who are his legal representatives, but reference in this judgment to the petitioner relate to Narotam Dass, deceased petitioner, for the sake of convenience.

(2) The facts giving rise to the writ petition are that on 23rd August, 1958 at about 5.20 in the afternoon at Amritsar, one Sohan Lal, who turned out to be an employee of the petitioner, was apprehended as soon as he had got into a moving train and on being taken out of the train, he was searched and was found in possession of gold in dispute weighing 149 Tolas, 11 Mashas and 6 Ratties. He denied the possession of the gold and later on gave a statement in which he appears to have made a clean breast of the circumstances and implicated his employer, the deceased petitioner and in substance he stated that the petitioner used to melt gold of foreign markings and used to send it through him to Delhi and he had done it a number of times. He was in possession of railway ticket from Amritsar to Ludhiana, although he had to proceed to Delhi. The Customs Officers seized the gold and later, on the same day, recorded the statement of the petitioner (copy of which has been filed as annexure R-3). Subsequently, the Collector of Customs issued a show cause notice dated 14th November 1958 and followed it with another show cause notice (Annexure A-1) dated 22nd December, 1958 calling upon the petitioner as well 'as Sohan Lal to show cause against the confiscation of the gold in dispute as well as further penal action against them. The petitioner as well as Sohan Lal filed a joint reply to the show cause notice dt. 26th December, 1958. Personal hearing was granted by the Collector who, after hearing the counsel for the petitioner and after adjourning the case on a number of occasions, finally passed the order of adjudication dated 31st May, 1961 (Annexure 'B'). The Collector held 'In view of the circumstances leading to the recovery of the gold from Shri Sohan Lal, the confessional statement of Shri Sohan Lal and the inability of Shri Narotam Das to prove bona fide procurement, there was of a reason to believe that the gold so recovered was of a foreign origin and had been imported into India illicitly.' He, therefore, found the petitioner and Sohan Lal both guilty and ordered absolute confiscation of the gold in dispute and imposed a penalty of Rs. 1,000.00 on the petitioner and Rs. 5,006.00 on Sohan Lal. The petitioner as well as Sohan Lal filed a joint appeal before the Central Board of Revenue which was firstly rejected by order dated 13th August, 1962, but

this order was set aside by the Central Government on 6th April, 1963 and the appeal was remanded to the Board for fresh decision after hearing the parties. Eventually after remand, the Board decided the appeal by order dated 31st January, 1964 (Annexure 'B') and after taking into consideration all the circumstances of the case and the arguments put forward, it affirmed the findings of the Collector and held that the petitioners had failed to discharge the onus rightly placed on them under Section 178-A of the Sea Customs Act. It may be mentioned here that the main point raised before the Collector as well as the Board on appeal was that the statement of Sohan Lal had been made under duress and it was not voluntary confession. This was rejected by both the authorities. The revision petition against these orders filed by the petitioner before the Govt. failed.

(3) It appears that Sohan Lal did not file any revision petition before the Central Government, nor has he filed any writ petition in this Court. Narotam Dass, however, is aggrieved by the aforesaid orders and has filed this writ petition.

(4) In support of the petition, the learned counsel has rightly not pressed the point raised before the customs authorities that the statement of Sohan Lal was not voluntary. Mr. Rawal has raised two contentions, firstly Section 178-A of the Sea Customs Act does not apply to the facts of the case and at all events, presumption can not be drawn against the petitioner Narottam Dass, even if it could be raised against Sohan Lal. Secondly, the customs authorities had collected evidence behind the back of the petitioner and the impugned order suffers from a contravention of principles of natural justice.

(5) I have heard the learned counsels for the parties at considerable length. Section 178-A of the Sea Customs Act reads as follows : -

178-A Burden of proof :-(1) When any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be on the person from whose possession the goods were seized.

(2) This section shall apply to gold, gold manufactures, diamond and other precious stones, cigarettes and cosmetics and any other goods which the Central Government may, by notification in the Official Gazette, specify in this behalf.

(3) EVERY notification issued under subsection (2) shall be laid before both House of Parliament as soon as may be after it is issued.'

It appears that the reasonable belief of the Customs Officer must be entertained either before or at the time of seizure. Any belief acquired after the actual seizure during the course of enquiries or adjudication proceedings, does not attract the presumption raised under the aforesaid provision of law. The words of the statutory provision are in the belief at the time of the seizure. It has no reference to the split seconds of the conclusion of the belief and the commencement of the seizure. If the customs authorities had a reasonable ground to entertain the belief before the seizure, the belief could certainly be confirmed by the circumstances disclosed at the seizure and there is nothing illegal in this process. This is entirely distinct from series of cases where there are absolutely no basis for entertaining a reasonable belief on the part of the customs authorities prior to seizure and the entire grounds for the belief were acquired during the course of enquiry or adjudication proceedings. Instances for such cases are *Nathella Sampathu Chetty v. Collector of Customs, Madras* A.I.R. 1969 Mad 142 and *M. G. Abrol Vs . Ami Chand*, : AIR1961 Bom227 . In these authorities, what has been found at fault is the acquisition of the belief on the grounds emerging long after the seizure during the course of adjudication proceedings, but this belief can, as expressly observed in the Madras case precede or coincide with the seizure.

(6) On the facts and circumstances of the case, Mr.B.R.Khosla. Deputy Superintendent Customs, who was the Inspector who seized the gold, has sworn an affidavit to the effect that he had apprehended Sohan Lal and recovered from his possession the gold and that he had entertained a reasonable belief that the gold recovered from Sohan Lal was illegally imported into India. The counter-affidavit filed by the Collector of Customs also reiterates the same position. The facts and circumstances of the case as established are that the customs authorities had secret information about the activities of Sohan Lal and they kept a

close watch on him. He was found to be traveling in suspicious circumstances and he did not board the train until it started moving and jumped into the moving train. The raiding party followed him and after apprehending him, pulled the alarm chain and brought him down and then Sohan Lal disclosed his identity and gave his father's name. At first he denied being in possession of any gold, but when in the background of the information he was closely examined, a hard substance was felt on his body. He was subjected to a personal search which resulted in the recovery of one arch shaped bar of gold mentioned above tied round his waist. Interrogations disclosed that Sohan Lal, in order to hoodwink the customs, as per instructions of his employer, purchased a ticket only up to Ludhiana, although he had to change the train for Delhi. In these circumstances the gold bar was seized under a reasonable belief that the same was smuggled.

(7) In my opinion, the circumstances of the case constitute sufficient grounds for the formation of a reasonable belief by the customs authorities that the gold which Sohan Lal was carrying was smuggled. The statement (Exhibit R.I) made by Sohan Lal only confirms the belief, but without the said statement, the requirements of the statutory provisions had been duly fulfilled.

(8) The learned counsel for the petitioner has laid great stress on the statement contained in the show cause memo where it is mentioned 'the circumstances of the case, the manner in which the gold bar in question was recovered combined with the facts disclosed by Shri Sohan Lal in a statement recorded at the time of seizure gave sufficient reasons to believe that the above gold had been imported into India and was liable to confiscation. The counsel says that the statement of Sohan Lal recorded subsequent to the seizure constituted an element for forming a reasonable belief and as such the presumption under Section 178-A could legally not be drawn. Learned counsel for the respondent was unable to explain this difficulty. I have considered the matter very carefully. In my opinion, the show cause notice was issued not for the purpose of telling the ground on the basis on which the reasonable belief had before seizure been formed i.e. the secret information was not disclosed ; its object was to give notice to the parties of the facts and circumstances which they were required to meet. The customs authorities in fact heavily rely not only on the statement of Sohan Lal, but also on

the articles recovered from the residential premises of the petitioner and they appropriately gave notice of all these facts and circumstances to the parties concerned in the show cause notices. In fact if they had not mentioned the statement of Sohan Lal on which they relied, there would have been greater occasion for the petitioner to complain. I am unable to agree with the learned counsel for the petitioner that the mention of the statement of Sohan Lal in the show cause notice militates against the facts and circumstances of the case at which before or at the time of seizure, the customs authorities had entertained a reasonable belief about the smuggled nature of the gold bar seized.

(9) In the alternative, the learned counsel for the petitioner submitted that the presumption- corporation under Section 178-A which was required to be rebutted by the parties could best be raised against Sohan Lal, but it was of no avail against Narotam Dass Petitioner. This contention has no force. The Supreme Court in *Babulal Amthalal Mehta Vs . Collector of Customs. Calcutta, : 1983ECR1657D(SC)* , observed that the presumption was available not only against the person from whose possession the articles had been recovered, but also all other persons connected with him, although it might be a hard case. In the circumstance of the present case, SohanLal was admittedly only a carrier of the gold and the real person who owned the gold and had caused it to be sent through Sohan Lal and had attempted to send it from him to his son at Delhi was Narotam Dass petitioner. The legal presumption, if it has any value, must be applied against the petitioner. As a result I reject the contention of the counsel for the petitioner and hold that the presumption under section 178-A has been rightly applied and the petitioner has failed to discharge the onus placed on him and the decision of the customs authorities does not suffer from any infirmity.

(10) The second contention raised on behalf of the petitioner has no merit at all. The main grievance raised by him was against the admissibility of the statement of Sohan Lal which the Collector and the Board of Revenue both repelled. The petitioner never made any grievance of any other fact or circumstance having been collected behind the back of the petitioner and taken into consideration by the customs authorities without bringing it to his notice. This grievance was neither raised before the Collector nor is it discussed in the order of the Board, nor in the

impugned order of the Central Government. In fact the petitioner has never made out a point that he had made a grievance of this question of fact before the Board of Revenue in appeal and the Board did not discuss or decide it. On the other hand, in paragraph 16 of the writ petition, it is stated that after the remand, respondent No. 2 (that is to say the Board) again dismissed the appeal by order dated 31 January, 1964 and again held that the petitioners have not been able to discharge the onus devolving on them under section 178-A of the Sea Customs Act, without deciding the question whether section 178-A has at all any application, and a copy of the impugned order was filed. This would show that the grievance made by the petitioners in respect of the appellate order of the Board is their failure to decide the applicability of section 178-A of the Sea Customs Act which I have above decided against the Petitioner. No grievance has been made by the petitioner in the writ petition that the Board did not decide any point raised by him in respect of consideration of any evidence behind his back.

(11) In ground No. (c) of paragraph 18, the petitioner has-challenged the order of the Central Government as well as the appellate order of the Board on the ground that the entire material on which the order of the Collector was based was collected behind the back of the petitioner and was neither put to him nor an opportunity given to explain the same and no witnesses were examined in the presence of the petitioner, nor were they tendered for cross-examination and the whole of the proceedings contravened the recognised principles of natural justice. This ground is not sustainable from the impugned orders and has been denied on oath by the Collector of Customs in the counter-affidavit filed and it has been specifically mentioned in paragraph 11 of the counter-affidavit that it is wrong that respondent No. 1 took into consideration any material gathered behind the back of the petitioner or took into account facts which were not relevant or admissible, the contravention of the principles of natural justice has rightly been termed as vague and misconceived and has been denied. Moreover this ground was not pressed by the petitioner before the Central Board of the Revenue in his appeal, nor has it been stated in the writ petition that he had raised this ground before the Board and the Board did not decide it. Under the circumstances there is no substance in this contention and the same is rejected. [Mr. Rattan Chand Kapur, Advocate]

