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K.S. Bawa Vs. Chief Controller of Imports and Exports

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Court : Delhi

Decided On : May-03-1989

Reported in : 1989(24)LC25(Delhi); ILR1989Delhi243

Judge : N.N. Goswamy and; M.K. Chawla, JJ.

Acts : United Nations (Privileges and Immnities) Act, 1947 - Sections 3

Appeal No. : Civil Writ Appeal No. 2461 of 1987

Appellant : K.S. Bawa

Respondent : Chief Controller of Imports and Exports

Advocate for Pet/Ap. : V.P. Singh and; S.K. Mishra, Advs

Judgement :

M.K. Chawla, J.

(1) (RULE D.B.)-- Tue petitions was a Member of the Indian Administrative Service (1951 Batch). Sometime in the month of October, 1975. he was deputed to serve the International Labour Organisation sad was appointed at the I.L.O's office at Bangkok (Thailand). He took poultry retirement from the Indian Administrative Service w.e.f. 29-2 -80 but continued to serve the I.L.O. till his retirement on 12th March, 1987. Before returning to India, the petitioner placed an order for the purchase of Isuzu Gemini Lt Delux 1500 cc diesel car and paid the invoice value id

foreign exchangs. As per the requirements of the import policy and other instructions issued by the Government of India from time to time in this regard, the petitioner applied for permission to import the car. The Chief Controller of Imports and Exports vide his order dated 7th May, 1987 refused the permission on the ground that. 'the period of 5 years from the date of the import of the earlier car is not yet over'. The petitioner represented that 5 years' restriction was apparently intended for import of cars under the 'returning Indians scheme' and not to cars imported by the persons enjoying the Diplomatic status and privileges As he has not availed of the concession available to 'Indian returning home', the order rejecting the permission be reviewed and he be allowed to import the car. Even this request was rejected by the Chief Controller of Imports and Exports on 22nd July, 1987.

(2) In the present petition, the petitioner is seeking the issuance of an appropriate writ, order or direction to quash the impugned orders dated 7th May, 1987 and 22nd July, 1987 of the respondent and for the issuance of the import permit, allowing the petitioner to import the diesel car in question.

(3) The case of the respondent as disclosed in the counter is that while posted as an employee of the I.L.O. at New Delhi, the petitioner imported the car in August-September, 1982 and sold the same to the State Trading Corporation of India on completion of his assignment in Delhi. After retirement, the petitioner has come back to India and wishes to import another car. His case is covered under Category 'A' of paragraph 155(1) of the Import and Export Policy, April 1985-March, 1988. Under this category, a second vehicle can be permitted to be imported only after the expiry of a minimum period of 5 years from the date of the Import of the first vehicle. This condition is applicable to all non-resident Indians and does not make any distinction between non-resident Indians importing a vehicle as a Diplomat or otherwise.

(4) This stand of the respondent in our opinion is devoid of any substance.

(5) During his service with the I.L.O., the petitioner was transferred to Delhi w.e.f. 1-1-1982 and posted as Advisor; Labour and Population. As an officer of the I.L.O , petitioner enjoyed diplomatic status and privileges by virtue of the United Nations

(Privileges and Immunities) Act, 1947. The Government of India, exercising powers u/s 3 of this Act, has conferred the same privileges and immunities on the officers of the I.L.O. posted in India as were applicable to the U.N. officials.

(6) The petitioner was also 'a privileged person' as defined under the Foreign Privileged Persons (Regulations of Customs Privileges) Rules, 1957. During his posting as an I.L.O. officer at New Delhi office, the petitioner imported Mercedes Benz car in September, 1982 against the exemption certificate, the petitioner gave an undertaking to the Government of India that he will not sell his car to any non-privileged person and shall offer it to the State Trading Corporation of India, as and when he wished to dispose it of.

(7) Sometime in the month of December, 1984, the petitioner was transferred back to Bangkok. Before leaving New Delhi Office, he made an application to the Government of India through the Ministry of External Affairs, for permission to retain the car at New Delhi for the use of his family members (Annexure B). The permission was not granted vide order dated 2nd February, 1985 (Annexure C). This petitioner then sold the car to the State Trading Corporation for a meagre amount of Rs. 1,05,852 which was much below the import price.

(8) The petitioner retired from I.L.O. on 12th March, 1987 and returned to India on the next day. However, before coming back to India, as observed earlier, the petitioner booked the car and paid the invoice value in foreign exchange. He completed all the formalities as required by the import policy for 1985-88 for the import of the car.

(9) It is not denied that during his tenure as an employee of the United Nations, the petitioner was enjoying the status of a diplomat. In that capacity he imported a Mercedes Benz car in August-September, 1982 under the provisions of Appendix 1-B clause 11(1) (1) of the Import Control Order, 1955. By virtue of United Nations (Privileges and Immunities) Act, 1947 read with Foreign Privileged Persons (Regulations of Customs Privileges) Rules, 1957, he was not required to obtain any import permit or to pay any import duty for importing the said car for his personal use. Keeping in view the above provisions, the petitioner was granted exemption certificate on 1st of January, 1982. As per the terms and conditions of

the Exemption Certificate, the petitioner could not retain that very car for the use of his family members and had to sell the same to the State Trading Corporation at a low price. The import of that car has nothing to do and cannot stand in the way of the petitioner to import another car as per the import policy for the year 1985-88 applicable to Indian Nationals returning to India for good. This in fact was his first attempt to import the car. The petitioner had served the International organisation for more than 11 years and was returning to India for good after having remained abroad for more than one year continuously. The import of the earlier car in the capacity of a Diplomat will not take away the right of the petitioner to import the car as an Indian national.

(10) The impugned orders refusing to allow the import of the car on the ground that. a period of 5 years has not yet elapsed are uncalled for, illegal and are liable to be quashed.

(11) At this stage, it may be noted that in his representation dated 26th May. 1987 (Annexure E), the petitioner gave the following undertaking:-

'The earlier car was imported under the Diplomatic Privileges on 8th of November, 1982 and the 5 years period expires on 8th of November, 1987. In order to comply with the most strict interpretation of the 5 years rule, I hereby give an undertaking that the new car will not be imported before 9th of November, 1987.'

(12) In spite of this undertaking, his representation was rejected by the Controller of Imports and Exports on 22nd July, 1937 (Annexure F). This rejection is also bad in law. In any case, even the period of 5 years has expired, and the respondent can have no ground to disallow this import.

(13) In the result, we accept the petition and quash the impugned orders dated 7th May, 1987 and 22nd July, 1987, and direct the respondents to allow the petitioner to import the car as prayed for in his petition, on his fulfillling the required formalities.

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