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Court : Delhi

Decided On : May-15-2002

Reported in : 2002(145)ELT519(Del)

Judge : Dalveer Bhandari and; Vikramajit Sen, JJ.

Acts : Customs Act, 1962 - Sections 110(2); Constitution of India - Article 226

Appeal No. : Civil Writ Petition No. 5704 of 2001

Appellant : Tripta Sharma

Respondent : Commissioner of Customs

Advocate for Def. : R.V. Sinha, Adv.

Advocate for Pet/Ap. : G.L. Rawal, Adv

Disposition : Petition dismissed

Judgement :

Dalveer Bhandari, J.

1. The petitioner has preferred this writ petition with the prayer that this Court may issue writ of certiorari quashing the action of the respondents of seizing or taking into possession Rs. 16,25,000/- belonging to the petitioner. It is also prayed that this amount be directed to be paid to the petitioner with interest.

2. On 14-8-2001, a show cause notice was sent to Sanjeev Kumar Sharma, son of the petitioner. The notices were also sent to Shekhar Yadav and M/s. S.Y. International. It is mentioned in the notice that specific information was received by the officers of the Directorate of Revenue Intelligence, Delhi Zonal Unit that M/s. S.Y. International, WZ-276-G, Inderpuri, New Delhi have indulged in fraudulent availment of drawback. It is also mentioned in the show cause notice that enquiries were made with ICD, Tughlakabad, New Delhi and it was found that in 4 shipping bills son of the petitioner claimed drawback of Rs. 13.25 lakhs.

3. It is mentioned in the notice that on examination, 200 cartons were found to contain old and used garments, from which labels were found removed in most of the cases. Some garments were stained and torn. Majority of the garments were rags made of old and used sarees. The garments consisted of different colours and did not appear to be a consignment against an export order. The garments also consisted of gents shirts/ladies tops/children wear etc. of different shapes and sizes. The goods were also found to be short in quantity. The total number of pieces found were 19810 as against 25000 declared and the value was ascertained to be Rs. 1/33,010/- as against declared FOB value of Rs. 80,32,500/-. Since the goods did not appear to be as per description/quantity/quality and value as declared in the invoices/shipping bills, thereforee, the goods were seized under Section 110 of the Customs Act, 1962, as the same appeared to be liable for confiscation. The officers also drew representative samples and resumed the shipping docu-ments. The proceedings were recorded under proper panchnama dated 17-11-2000.

4. Summons under Section 108 of the Customs Act, 1962 were issued to Shekhar Yadav on 20-4-2001 for his appearance on 24-4-2001 but nobody appeared for evidence. Since the exporter could not be located and no statement had been recorded, DRI issued show cause notice for extension of time for a further period of six months from the last date of issue of show cause notice under the proviso to Sub-section (2) of Section 110 of the Customs Act 1962.

5. It is mentioned that because of continuous efforts the premises of M/s. S.Y. International was finally identified. Search was conducted on 22-6-2001 at the

premises which is the residential address of Shekhar Yadav. Nothing incriminating was found. During the course of investigations, it was also gathered that Shekhar Yadav was only a front man and another person by the name of Sanjeev Kumar Sharma was the main person behind the export fraud of M/s. S.Y. International. Search was also conducted at the residential premises of Sanjeev Kumar Sharma on 22-6-2001. Some incriminating documents/things were recovered and seized under the provisions of Section 110 of the Customs Act, 1962.

6. The statement of Shekhar Yadav was recorded under Section 108 of the Customs Act on 9-7-2001 and 9-8-2001 wherein he stated that Sanjeev Kumar Sharma was the actual owner of M/s. S.Y. International and Sanjeev Kumar Sharma persuaded him to sign some documents/papers for consideration of some liquor and a small amount of money. During the search at the residence of Sanjeev Kumar Sharma it was found that in one of the telephone diaries, accounts pertaining to M/s. S.Y. International have been given on page Nos. 98 and 99 of the said diary. Summons were issued to Sanjeev Kumar Sharma on 21-6-2001, 12-7-2001 and 3-8-2001 for his appearance on 25-6-2001, 16-7-2001 and 8-8-2001 respectively but he did not appear for evidence.

7. The following facts emerge from the investigation conducted by the DRI:

(i) M/s. S.Y. International, WZ-276G, Inderpuri, New Delhi is a proprietorship firm and Shekhar Yadav is the proprietor of the firm on record and is only a front man.

(ii) Sanjeev Kumar Sharma is the actual owner of M/s. S.Y. international.

(iii) The total drawback on 4 shipping bills claimed was Rs. 13.25 lakhs.

(iv) On physical examination, 200 cartons were found to contain old and used garments on which its labels were removed in most of the cases. Majority of the garments were rags made of old and used sarees of different colours and sizes. The actual market value of the goods was ascertained as Rs. 1,33,010/- whereas the drawback claimed on the goods was Rs. 13.25 lakhs. The quantity actually found was 19810 as against 25000 declared.

8. It is also mentioned in the notice that on paper M/s. S.Y. International is owned by Shekhar Yadav but actual owner is Sanjeev Kumar Sharma and he attempted to export rags at a highly inflated price under drawback scheme, just to avail huge drawback fraudulently. It is further mentioned that Sanjeev Kumar Sharma has already availed drawback of Rs. 2,36,746/- on exports of cheap quality rags from Air Cargo, New Delhi.

9. In the petition and CM. No. 7984/01 it is mentioned that the amount of Rs. 16.25 lakhs belong to the petitioner and not to Sanjeev Kumar Sharma and this amount be refunded to her.

10. In the counter affidavit filed by Shri Sanjay Mangal, Deputy Director, Directorate of Revenue Intelligence, it is mentioned that huge assets have been purchased by Sanjeev Kumar Sharma in the name of his sisters and other relatives. It is also mentioned that Sanjeev Sharma has been involved in fraudulent availment of huge duty drawback benefit through several firms floated in the name of various persons and this recovered Indian currency is proceedings of those illegal drawback claims. The Director of Income Tax (Investigations) have also been informed about the recovery of Indian currency of Rs. 16.25 lakhs from the residence of Sanjeev Kumar Sharma to investigate the matter under the Income Tax Act.

11. It is mentioned that residential premises of Sanjeev Kumar Sharma was searched on 22-6-2001 under the search authorization issued under Section 105 of the Customs Act. The proceedings were drawn under proper panchnama dated 22-6-2001 drawn on the spot in the presence of two independent witnesses and the petitioner, mother of Sanjeev Kumar Sharma. The petitioner had put her right thumb impression on each page of panchnama along with signatures of the two independent witnesses. A copy of the panchnama was handed over to the petitioner and she again put her right thumb impression on the last page of panchnama in token of receiving the copy of the panchnama.

12. It is stated that at no point of time either during the search/seizure proceedings or even immediately thereafter, the petitioner claimed ownership of the said amount or produced any evidence to show her ownership. It is mentioned in the

counter affidavit that Sanjeev Kumar Sharma had claimed part ownership of the said money. The amount of Rs. 16.25 lakhs was recovered from the premises of Sanjeev Kumar Sharma and not from the possession of the petitioner. It is mentioned that for the first time on 7-8-2001 after about 1 1/2 months a letter was sent by the Advocate of the petitioner in which she claimed ownership of the said amount.

13. It is submitted that even after granting a number of opportunities, the learned Counsel for the petitioner has failed to produce income tax and wealth tax returns of the petitioner justifying that she could possess this kind of huge amount. It is further submitted that the money was recovered from the second floor premises of Sanjeev Kumar Sharma. The petitioner neither had the ownership nor the amount was recovered from her possession. It is contended that to improve the case, in the letter dated 7-8-2001 sent by her Counsel, ownership of this amount has been claimed by the petitioner. This is clearly an after thought. It is mentioned in the counter affidavit thatSanjeev Kumar Sharma has floated a number of firms in the name of different persons and has availed huge amount of duty drawback benefits fraudulently. Despite number of summons on various occasions, Sanjeev Kumar Sharma did not appear before the respondent and because of this totally uncooperative attitude the delay is being caused in the entire investigation.

14. It is submitted that Sanjeev Kumar Sharma has got this petition filed through his old and totally illiterate mother (who cannot even sign and has only placed her thumb impression on various documents) in order to lay claims to and seek a refund of the amount of Rs. 16.25 lakhs seized from his (Sanjeev Kumar Sharma) premises.

15. Mr. Rawal, the learned Counsel for the petitioner submitted that the amount was recovered from the possession of the petitioner and it must be returned to her forthwith with interest. This has been denied by the learned Counsel appearing for the respondent. He submitted that the petitioner had nothing to do with Rs. 16.25 lakhs recovered from the premises of Sanjeev Sharma, the son of the petitioner. It is stated that this amount is part of fraudulently availed duty drawback. The petitioner is admittedly an illiterate and old woman. She cannot even sign on

papers and has only affixed thumb impression on various documents.

16. Prima facie, we are of the view that neither the amount recovered during the search belonged to the petitioner nor was recovered from her possession. Even in the present proceedings, a number of adjournments were availed by learned Counsel for the petitioner in order to produce the Income Tax Returns of the petitioner in support of the contention that she was possessed of this large sum of money. Eventually, learned Counsel expressed his failure to obtain instructions and proceeded to argue the petition instead. We cannot but draw an adverse inference against her.

17. The learned Counsel for the petitioner has placed reliance on a Constitution Bench judgment of the Supreme Court in I.J. Rao, Asstt. Collector of Customs v. Bibhuti Bhushan Bagh : 1989(42)ELT338(SC) . In this case their Lordships of the Supreme Court observed that notice must go to the person from whose possession goods have been seized before the expiry of the original period of six months.

18. Mr. Rawal also placed reliance on Assistant Collector of Customs and Superintendent, Preventive Service Customs, Calcutta and Others v. Charan Das Malhotra : 1973ECR1(SC) . In this case the Court observed that since Sub-section (2) of Section 110 of the Customs Act contemplates some sort of enquiry, thereforee, the Collector is expected not to pass extension orders mechanically or as a matter of routine but only on being satisfied that there exist facts which indicate that the investigation could not be completed for bona fide reasons within the time laid in Section 110(2) and extension of the period has become necessary. The Court observed that the powers under Section 110 of the Customs Act, 1962 are not to be exercised without an opportunity of being heard given to the person from whom the goods were seized.

19. Mr. Rawal has also placed reliance on a Division Bench judgment of the Patna High Court in K.K. Sukhani v. Union of India : 1999(110)ELT505(Pat) on the same principle that it is imperative for the Collector to issue notice before the grant of an extension.

20. Reliance has also been placed on a Single Bench judgment of the Calcutta High Court in Chunilal Damani v. Collector of Customs and Central Excise, West Bengal 2000 (126) E.L.T. 357 (Cal.). In this case it is observed that the party whose goods are seized must be heard before an order under Section 110(2) of the Customs Act, 1962 extending the time for notice is issued.

21. There is no quarrel with the proposition of law which has been laid down in the aforesaid cases. In all these cases it is clearly mentioned that notice has to be given to the person from whom goods have been seized. In the instant case the amount of Rs. 16.25 lakhs has been recovered from the premises of Sanjeev Sharma, and not from the possession of the petitioner, as alleged. It is not the case of the petitioner that notices and summons have not been issued to Sanjeev Sharma. The notices or summons were not required to be served on the petitioner because the alleged amount was not recovered from her possession. This case has been developed later on, in an effort to incorrectly claim the protection of Section 110(2) of the Act. Any person who owns or possesses property/money would lay claim to it spontaneously and not after several weeks pursuant to legal advice. thereforee, the cases cited by the Counsel for the petitioner have no application to the facts and circumstances of the present case.

22. We are clearly of the opinion that the petitioner has nothing to do with the amount of Rs. 16.25 lakhs recovered from the residence of Sanjeev Kumar Sharma. Neither the amount was seized from the petitioner's possession nor at any point of time during the search or seizure proceedings she claimed ownership of this amount. This petition, in our considered opinion, is a total abuse of the process of law and is accordingly dismissed with costs.

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