

Karunakaran Vs. Deputy Superintendent of Central Excise

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Court : Kerala

Decided On : Mar-31-1960

Reported in : AIR1961Ker93; 1961CriLJ379

Judge : M.A. Ansari, C.J. and; T.C. Raghavan, J.

Acts : [Central Excise Act, 1944](#) - Sections 10 and 12; Central Excise Rules, 1944 - Rule 215; Sea Customs Act - Sections 168

Appeal No. : A.S. No. 397 of 1959

Appellant : Karunakaran

Respondent : Deputy Superintendent of Central Excise

Advocate for Def. : V. Rama Shenoi and; R. Raya Shenoi, Adv.

Advocate for Pet/Ap. : M.T. Paikaday, Adv.

Disposition : Appeal dismissed

Judgement :

Ansari, C.J.

1. This appeal is against the judgment by a learned Judge of this Court, dismissing two petitions under Article 226. One of the petitioners still insists on challenging the proceedings whereby his car has been impounded on the allegation of certain

provisions of the Central Excise Act having been infringed. Before dealing with the merits of the appeal, we would record our appreciation of the learning and skill, with which the appellant's, advocate has argued his client's case.

We would also acknowledge our indebtedness to the equally learned argument of the respondent's counsel. Coming to the facts of the appeal, they may be shortly narrated: On July 14, 1958, a car belonging to the appellant was found conveying four bags of contraband coffee seeds belonging to another, and this was at about 4-15 a.m., at a place about a mile south of Erattupetta. The Deputy Superintendent of the Central Excise, having stopped, searched the car and took the contraband coffee, as well as the car to the Excise Office, Moovaltupuzha.

The appellant's request for the conveyance being unconditionally released was rejected, and it is stated that the rejection was because further proceedings concerning the illicit transport were then contemplated. For the purpose of deciding the appellant's objection to his car having been seized, it is not necessary to adjudicate on the merits of the case against the appellant, for, should the attachment be found to be in exercise of lawful powers, the complaint of the fundamental rights under Article 31(1) having been infringed, would fail, and the appellant would be entitled to press his other objections on the merits of the case against himself before the proper Court, or authority.

We therefore propose to deal in this appeal with, the question of how far the seizure of the car was not justified, and the appellant's advocate has raised three grounds for the impounding being illegal. The first is that the authorities under Central Excise Act, hereafter called the Act, have no authority of impounding land vehicles and the forfeiture must be ordered by a court in proceedings instituted against the party.

The second is that the authorisation under Section 12 of the Act does not enable the rulemaking authority to incorporate in the rules under the Act, provisions of the Sea Customs Act, so as to make power of confiscation under the Sea Customs Act, part and parcel of the rules under the Act. The last is that assuming such authorisation to be justified under Section 12, the delegation amounting to conferring power to enact, is void, and the rules framed thereunder have no legal

force.

2. Before dealing with these arguments, it would be of advantage to briefly state the relevant provisions of the Act that came into force on February 28, 1944, but had been later amended by Act XLI of 1954. Section 3 provides for the levy and collection of excise duty on all excisable goods other than salt, which are produced or manufactured in India, at the rates set forth in the First Schedule. Section 9 enacts penalties against a person, who contravenes any provisions of the notifications under Section 0 or 8, or of rules under Sub-section (2) of Section 37, Or evades payment of any duty payable under the Act, or fails to supply information or attempts to commit or abets the commission of any of the offences mentioned in the section.

Such acts are punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both. Section 10 vests courts trying cases with power to order forfeiture to the Government of any goods in respect of which the Court is satisfied that an offence has been committed. The same section further authorises the Court to order forfeiture to the Government of any receptacles, packages or coverings in which such goods are contained, and the animals, vehicles, vessels or other conveyances used in carrying the goods. The next important section reads as follows:

Section 12: '* *'. The Central Government may, by notification in the Official Gazette, declare that any of the provisions of the Sea Customs Act, 1878 (VIII of 1878), relating to the levy of and exemption from customs duties, drawback of duty, ware-housing, offences and penalties, confiscations, and procedure relating to offences and appeals shall, with such modifications and alterations as it may consider necessary or desirable to adapt them to the circumstances, be applicable in regard to like matters in respect of the duties imposed by the section.'

3. The powers of recording evidence and of making enquiry, etc., are contained in Chap. III. Some of the penalties for carrying excisable goods are contained in Ch. IV, whose Section 24 makes the owner and master of a vessel of three hundred tons and upwards liable to imprisonment for a term that may extend to six months,

and Section 28 enacts. that every vessel in which excisable goods are carried so as to render the owner of such vessels liable to penalties under Section 24 shall be liable to confiscation. Section 33 directs that where the rules under the Act create the liability, the confiscation shall be adjudged without any limitation by a Collector of Excise, and within certain limits by the Assistant Collector. Section 35 provides for appeals, and revision is authorised by Section 56, Finally Section 37 confers the power on the Central Government to make rules and the first Sub-section bestows the power' in general terms. Sub-section (2) then enumerates 20 heads under which the rules may be framed, and Sub-section (3) gives the penalty for infringing the rules.

4. Section 37(2)(iii) is important and it reads as follows:

'Section 37(2): in particular and without prejudice to the generality of the foregoing power, such rules may:--

X X X

(iii) prohibit absolutely, or with such exceptions, or subject to such conditions as the Central Government think fit, the transit of excisable goods from any part of India to any other part thereof:

X XX

5. in addition to the aforesaid provisions, two of the rules framed under the Act should also be stated. They are:

Rule 209 : '* *'. The provisions of Sections 172, 178, 179 and 180 of the Sea Customs Act, 1878, shall mutatis mutandis be applicable in regard to entries, searches, seizures and investigations made under the Act or these Rules.'

Rule 215 : '* *'. The provisions of Sections 168, 189 and 192 of the Sea Customs Act, 1878, shall mutatis mutandis be applicable to any decision or order relating to any duty, fine or penalty leviable in respect of any goods under the Act.'

6. It is clear that because of these two rules the aforesaid seven sections of the Sea Customs Act have become part of the Act, and a brief summary of these

provisions should also be given. Section 168 authorises confiscation of goods and conveyances used in the removal of any goods liable to pay the duty, Section 178 empowers seizure of things liable to confiscation, Section 179 provides how they are to be dealt with, Section 189 authorises for deposits pending appeal and Section 192 for goods being detained till fine is paid.

It cannot, therefore, be disputed that apart from the punishments and confiscation under the Act, there is the further liability to confiscation that has arisen by the incorporation of Section 168 of the Sea Customs Act into the Act. It is further clear that whereas under Section 10 of the Act, certain sentences can be passed by the Magistrate, inclusive of orders concerning confiscation, there is yet another hierarchy of authorities that can pass orders of confiscation. The reason for the two sets of tribunals is obvious, and rests on the distinction between confiscation and other forms of punishments under the Act.

That distinction has been pointed out by the Supreme Court in *Sewpujanrai v. Collector of Customs*, AIR 1958 SC 845, where S.K. Das, J., dealing with the confiscation under the Sea Customs Act has held it to be proceedings in rem whereas the proceedings before the Magistrate to be in personam. The proceedings in rem have been further held in *Thomas Dana v. State of Punjab*, AIR 1959 SC 375, not to be punishment so as to exclude further proceedings before the Magistrate against the same person on the ground of the latter being in violation of the rule against double jeopardy.

Therefore we hold that the provision of forfeiture in Section 10 of the Act does not mean that to be the only proceeding wherein a vehicle implicated in contravening the provisions of the Act can be confiscated, and other provisions in the Act concerning confiscation would not be an anomaly. Therefore the first ground taken for allowing the appeal fails, as proceedings for confiscation can be justifiably begun before other authorities assuming that to be the proceedings contemplated by the seizure of the appellant's car in this case,

7. The appellant's learned advocate has then argued that the confiscation of any land vehicle was contrary to the provisions of the Act that has provided only for the confiscation of vessels of a particular description under Section 28 and therefore

any rules authorising land vehicles being impounded would be contrary to the provisions of the Act. We think no useful purpose will be served in enumerating the several sections cited in support of the argument, for the learned advocate had to concede that the word 'confiscation' in Section 12 does permit the relevant provisions of the Sea Customs Act being brought into the Act. The consequences of incorporating another legislation is stated by Lord Esher in re, Wood's Estate, (1886) 31 Ch D 607(615), in these words:

'Now what is the legal effect of the 9th section of the Act of 1855, which brings into that Act those sections of the former Act? It is to put them into the Act of 1855, just as if they had been written into it for the first time. If a subsequent Act brings into itself by reference, some of the clauses of the former Act, the legal effect of that, as has often been held, is to write those sections into the new Act just as if they had been actually written in it with the pen, or printed in it, and, the moment you have those clauses in the later Act, you have no occasion to refer to the former Act at all.'

8. The learned Judge was speaking about the enactment having itself done the incorporation, but the position is not different where the other enactment be brought through rules framed in exercise of the properly delegated authority. It is clear that the Act does contemplate 'confiscation' of something other than vessels of a particular description, otherwise such a word; in Section 12 of the Act would become meaningless. We feel that the use of the word 'confiscation' in Section 12 cannot but indicate that rules concerning confiscation in the Sea Customs Act were to be brought into the Act.

After all, excise duty is but a form of revenue- and one would expect the Legislature permitting the Government to adopt methods of proved efficacy for purpose of realising the new tax as well. Nor do we see for what other purpose the word could have been used in Section 12 when there were already provisions for confiscation in Section 28. The learned counsel then argued that the Act having placed the limitation on confiscation of the vessel could not be interpreted as having authorised wholesale adaptation of the sections relating to confiscation from the Sea Customs Act.

We do not take Rule 215 as having absolutely adopted Section 168 of the Sea Customs Act for purpose of the Act, otherwise words 'mutatis mutandis' in the rule would be meaningless. The conflicting provisions in the two Acts because of those words in the rule are reconcilable, and the authority to confiscate under Section 168 is not intended to defeat that (what?) the Act provides for confiscation of the vessels. It follows that Section 12 is clear and the rules have properly brought in provisions of the Sea Customs Act into the Act. We therefore do not think that the second ground of the appellant's advocate is established so as to justify the order by the learned Judge of this Court being reversed.

9. Coming to the last ground, the rule is well established that any authority entrusted with a duty under the Constitution cannot surrender such powers in favour of a subordinate. It follows that the Legislature cannot delegate legislative powers to another, but this proposition has never been treated as covering authority to frame rules where the object and limits of the rules be not vague. It further follows that where framing the rules amounts to mere ministerial acts, the authorisation is not forbidden.

In our opinion the legislative intention of confiscating vehicles implicated in contravening the provisions of the Act is clearly indicated by Section 10 wherein the Magistrate is authorised to confiscate. It is also clearly indicated by Section 12. In these circumstances we do not think that Section 12 of the Act transgresses the limits of proper delegation and therefore the third ground also fails.

10. We would, however, emphasise that whatever has been said in this judgment concerning the authority of the officer under the Act is without prejudice to the other objections, the appellant may have in the case against himself as in this judgment we are concerned only with the legality of the provision allowing ,'Onfiscation, Ib is also of advantage to take note that exercise of powers should not cause harassment, and unnecessary detention of vehicles should as far as possible be avoided. this appeal fails, but having regard to the circumstances of the case the parties will bear their costs of this appeal.