

**Santhanam Vs. Collector of C. Excise and Customs, Madurai-2**

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**Court :** Chennai

**Decided On :** Jan-27-1994

**Reported in :** 1994(46)ECC204; 1995(79)ELT564(Mad)

**Judge :** Kanakaraj, J.

**Acts :** [Customs Act, 1962](#) - Sections 11 and 124(1)

**Appeal No. :** Writ Petition No. 2352/1986

**Appellant :** Santhanam

**Respondent :** Collector of C. Excise and Customs, Madurai-2

**Judgement :**

ORDER

**Kanakaraj, J.**

1. On 28-8-1982 the officers attached to the Customs Circle, Rameswaram conducted a search of one of the huts belonging to one Anthony of Ariyankundu Village. Though the said Anthony was not present, the officers recovered 20 polythene parcels from the hut. They were seized for contravention of Section 11 of the [Customs Act, 1962](#) (hereinafter called 'the Act') read with Section 3 of the Imports and Exports (Control) Act, 1947. The respondents proceeded with the investigation and recorded statements from several persons including the said

Anthony. The investigation disclosed that the petitioner was involved in smuggling activities and was using the said hut of Anthony for concealing the contraband articles. Later on it is stated that the witnesses retracted from their statements. The petitioner was examined and a show cause notice dated 23-2-1983 was issued. The petitioner submitted his explanation. By an order dated 28-10-1983 the subject goods were confiscated and a personal penalty of Rs. 25,000 was imposed on the petitioner. The petitioner did not challenge the order of confiscation, but questioned the imposition of a personal penalty of Rs. 25,000 and filed an appeal to the second respondent. By an order dated 26-11-1985 the second respondent confirmed the order of the first respondent, but reduced the personal penalty to Rs. 10,000. The writ petition is to quash the order of the second respondent dated 26-11-1995 confirming the order of the first respondent dated 28-10-1983.

2. Mr. N. R. Chandran, learned Senior Counsel for the petitioner, urges before me only one ground to invalidate the impugned order. According to him, the principles of natural justice have been violated, inasmuch as the statements recorded from several persons have been relied upon, without furnishing a copy of the statements to the petitioner. He contends that this is in gross violation of Section 124(1)(c) of the Act. That sub-section says that before taking action and passing orders a reasonable opportunity should be given to the person sought to be damnified. Argues Mr. N. R. Chandran, the word 'reasonable opportunity' would include the furnishing of copies of statements which are relied on by the authorities to damnify the petitioner. As against this argument Mr. C. A. Sundaram for the respondents makes a two-fold reply. The first is that the principles of natural justice have not been violated and the second is that in any event the petitioner has adequate alternative remedies available to him under the Act and cannot be permitted to canvass the factual findings before this Court under Article 226 of the Constitution of India.

3. After perusing the orders challenged in this writ petition, I am of the opinion that it will be wise to dispose of the writ petition on merits without going into the question whether the same is liable to be dismissed on the ground of the availability of alternative remedies. This is because the writ petition was admitted

on 21-3-1986 and is pending in this Court for nearly eight years. It would not be proper to dismiss the writ petition at this stage on the ground that the petitioner should have availed of the alternative remedy. Secondly, the issue lies in a narrow compass and can be disposed of on the available materials, applying the well-known principles of law.

4. Principles of natural justice are not contained anything water-tight compartment but will differ from case to case. The primary answer which a court should look for, is whether the aggrieved had been given a reasonable opportunity to defend his case and whether the authorities had acted in a fair and reasonable manner. May be, one can also find out whether any serious prejudice has been caused to the person aggrieved by the procedure adopted by the authorities. Looked from this angle I am fully satisfied that the petitioner had every opportunity to defend his case, seek for copies of documents and put forth all his objections at various stages. The complaint regarding the non-furnishing of copies is being raised only at the stage of arguments and no evidence is placed before me to show that the petitioner had asked for copies of the statements which were relied upon by the authorities at any earlier stage. Therefore, it cannot be said that the petitioner was prejudiced by the authorities relying on the statements of certain persons. As to what weight should be attached to such statements in the circumstances of the case can however be adverted to at the time of examining the merits of the case. It is not disputed that a show cause notice was given wherein reference was made to all the said statements. In reply to the show cause notice, it is not alleged that the petitioner sought for copies of the statements. The first respondent had passed orders on 28-10-1983 and in the memorandum of grounds of appeal made to the second respondent it is not alleged that a complaint was made about the non-furnishing of the statements. If such a complaint had been made it would have been possible for the authorities to furnish the copies.

5. Even during the pendency of the writ petition in this Court the petitioner could have very well called upon the respondents to produce the said statements and perused the same. Therefore, I reject the plea of violation of principles of natural justice.

6. On the merits I find that the first respondent has referred to the retracted statement of Anthony wherein he has implicated the petitioner and has also described the manner in which the subject goods were concealed in his hut. The Mahazar dated 23-6-1982 proves the recovery of the goods from the hut of Anthony. Therefore, Anthony has to give an explanation for the presence of contraband articles in his hut. It is also noticed that the said Anthony had absconded for quite sometime. All the persons who had given statements are illiterate persons and the first respondent rightly observes that there must be a person who had organised the entire show. Corroboration was available in the form of statements from one Sundaram and Devarajan. The petitioner was not in a position to explain as to why those illiterate persons should implicate him. There is one other significant factor relied on by the first respondent, namely, that the petitioner had in fact admitted that he was earlier involved in certain smuggling activities. These reasonings given by the first respondent have once again been considered by the Tribunal and they did not see any reason to differ from the findings of the first respondent. The Tribunal rightly observes that the adjudicating authorities are concerned only with the preponderance of probability indicating the involvement of the petitioner and cannot be tied down by strict rules of evidence. What is more, the Tribunal thought it fit to reduce the penalty from Rs. 25,000 to Rs. 10,000. I have no material before me to interfere with the said factual findings of the two authorities. Consequently, the writ petition fails and is dismissed. However, there will be no order as to costs.