Rajesh Kumar Vs. the Commissioner of Customs and the Superintendent of Customs (Disposal)

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Court : Chennai

Decided On : Jan-20-2006

Reported in : 2006(198)ELT9(Mad)

Judge : Elipe Dharma Rao, J.

Acts : Customs Act, 1962 - Sections 110, 110(1A), 111, 123, 125, 125(2) and 128A; Constitution of India - Article 226

Appeal No. : W.P. No. 3 of 2001

Appellant : Rajesh Kumar

Respondent : The Commissioner of Customs and the Superintendent of Customs (Disposal)

Advocate for Def. : K. Ramakrishna Reddy, SCGSC

Advocate for Pet/Ap. : A. Thiyagarajan, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

Elipe Dharma Rao, J.

1. The petitioner seeks for the issuance of writ of Certiorarified Mandamus to call for the records of the first respondent in C.No. VIII/10/7/98 - Cus - Adj/ Order No. 38/99 (Joint Commissioner) Denovo dated 30.11.1999, quash the same as illegal and direction the respondents to release the gold to the petitioner without insisting for the payment of the Customs duty.

2. The case of the petitioner is that on 15.02.1995 at about 4.00 p.m., the Intelligence Officers of the Preventive Unit, Customs attached to Cuddalore, checked TPTC bus bearing No. TN-32-N-0472 bound for Kumbakkonam near Koliyalur and seized two gold biscuits from the person of the petitioner and an incriminating statement was recorded. On 17.02.1995, after two days, the petitioner was remanded to judicial custody. On 27.02.1995, the petitioner retracted the statement recorded by the respondent officers on 16.02.1975 and submitted the baggage receipt No. 28777 dated 13.02.1995 issued by the Airport Authorities of Customs to one Selvaraj, NRI and claimed the gold as he was in possession of the gold through legal source. On 20.07.1995, a show caused notice was issued under Section 111(d) of the Customs Act, to show cause as to why the gold biscuits valued at Rs.1,06,500/- should not be confiscated and Confiscation order was passed on 15.11.1995, against which an appeal was filed before the Commissioner of Customs, Trichy. The same was rejected by the appellate authority by order dated 28.06.1996. Thereafter, the petitioner preferred an appeal to CEGAT, South Zonal Bench at Madras against the order of the Commissioner. The Tribunal remanded the matter for consideration under Section 125 of the Customs Act for redemption by order dated 29.12.1997. The Joint Commissioner of Customs, Trichy, the first respondent herein ordered to redeem on payment of fine of Rs.50,000/- under Section 125 of the Customs Act and appropriate customs duty payable thereon together with penalty of Rs.15,000/-. Thereafter, the petitioner sent a letter to the second respondent on 16.12.1999 for the issuance of challan for making redemption fine and personal penalty to get the gold from the department. By letter dated 27.09.2000, the petitioner was informed that the duty was fixed at Rs.56,203/- as on 27.09.2000. Aggrieved over the said order, the present writ petition is filed.

3. The respondents filed a counter affidavit stating that while the Customs Officers attached to the Divisional Preventive Unit conducting vehicular check up on 15.02.1995, the petitioner was found in possession of two gold biscuits of foreign origin, for which he could not produce any valid duty paid receipts. Hence the officers seized the same as per the Act. As per the order of the Deputy Commissioner of Customs, dated 15.11.1995, the seized goods were ordered absolutely confiscated with personal penalty of Rs.25,000/- and the same was confirmed by the Commissioner (Appeals) by order dated 28.06.1996. Aggrieved over the same, the petitioner preferred an appeal to CEGAT and the Tribunal held that the gold biscuits were liable for confiscation as the petitioner has not discharged the burden of proof as per Section 123 of the Customs Act, 1962 and remitted the matter back to the adjudicating authority. As per the direction of the Tribunal, the Joint Commissioner of Customs, Trichy adjudicated the case and ordered confiscation of the gold biscuits; but gave an option to redeem the same on payment of fine of Rs.50,000/- and appropriate Customs duty payable thereon. If the petitioner was aggrieved by the said order, he should have gone on appeal within the statutory period. Without availing such remedy, this writ petition filed by the petitioner under Article 226 of The Constitution of India is not maintainable and the same is liable to be dismissed.

4. Learned counsel for the petitioner has submitted that when the matter was pending before the statutory appellate authority, the respondents have no right to dispose of the confiscated goods and in his letter, the Superintendent of Customs did not say anything about the date of disposal of the gold biscuits and only he has asked to pay Rs.1,21,203/- and get the sale proceeds of Rs.92,663/- and therefore, the impugned order is liable to be set aside.

5. Learned Senior Central Government Standing Counsel appearing for the respondents would submit that the seized gold biscuits were sold for Rs.92,663/- based on the guidelines issued by the Ministry in F.No. 711/164/93-Cus. (AS) dated 12.03.1996. He further submits that if the petitioner is not satisfied with the duty fixed by the authority, as per Section 128A of the Customs Act, the petitioner has got a right by way of appeal before the appellate authority; but without exhausting that remedy, the petitioner has approached this Court under Article 226

of The Constitution of India, which is not maintainable and the writ petition is liable to be dismissed.

6. He further refers to the provisions of law under which the seizure was effected and also confiscation under Section 111(d) of the Customs Act. As per Section 125(2) of the Act, where any fine in lieu of confiscation of goods is imposed under Sub-section (1), the owner of such goods or the person referred to in Sub-section (1) shall, in addition, be liable to any duty and charges payable in respect of such goods and therefore, the petitioner is liable to pay the redemption fine and personal penalty along with the duty and if the petitioner is not satisfied about the valuation of the duty, he should have approached the appellate authority.

7. Considering the facts and circumstances of the case, I am not satisfied with the contentions raised by the learned counsel for the petitioner that there is no finding that the petitioner has smuggled the goods. On the other hand, as argued by the learned Senior Central Government Standing Counsel, the gold biscuits of foreign origin were seized from the petitioner, who had not produced relevant duty paid receipts or any other document and hence it was held that the gold biscuits were smuggled by the petitioner. Learned counsel for the petitioner further submits that it is not fair on the part of the respondents in not disclosing the date of disposal of the gold biscuits and its real value. As far as date of disposal of the two gold biscuits is concerned, they were disposed off in terms of Sub-section 1A of Section 110 of the Customs Act, 1962. After the adjudicating proceedings were completed on 15.11.1995, the petitioner has not submitted any requisition for not disposing the gold under seizure. In terms of Notification No. 31/86- Cus. Dated 05.02.1986 as amended and having regard to the nature of commodities, the Central Government has specified gold in all forms including bullion as one of the items that can be disposed of by the proper officer after its seizure in terms of the provisions of Sub-section 1A of Section 110 of the Customs Act, 1962. The gold biscuits were disposed off as per the order dated 08.02.1998 by the Assistant Commissioner of Central Excise, Customs Division, Cuddalore. As per the guidelines issued by the Ministry dated 12.03.1996, the two gold biscuits were sold for Rs.92,663/-.

8. In view of the above statement made in the counter affidavit, the petitioner is not correct in saying that the date of sale of the gold was not given by the respondents. Further, to prove the fact that the gold biscuits were not smuggled by the petitioner, he has not at all come forward to produce any evidence that the gold biscuits were purchased by him legally as per law. Further, while remitting the matter, the Tribunal directed the respondents to exercise the power conferred under Section 125 of the Act and fix the fine, penalty and duty payable by the petitioner and therefore, I see no illegality or contravention of any provisions by the respondents in dealing with the gold biscuits seized from the petitioner. Therefore, as contended by the learned Senior Central Government Standing Counsel, if the petitioner is not satisfied with the finding of the first respondent, he can very well approach the appellate authority to determine the fixation of the duty payable by him. When an efficacious remedy is available by way of an appeal before the appellate authority, without exhausting the same, the petitioner has filed the present writ petition under Article 226 of the Constitution of India.

9. For the reasons stated above, the writ petition fails and the same is dismissed. No costs. Taking into consideration the fact that the gold biscuits were seized in the year 1994, four weeks time is granted to the petitioner from today to file an appeal before the appropriate authority and thereafter, six months time is granted to dispose of the appeal in accordance with law.