

In Re: S.S. Kothari

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SooperKanoon Citation : sooperkanoon.com/870202

Court : Kolkata

Decided On : Sep-19-1984

Reported in : 1985(6)ECC81,1987(30)ELT156(Cal)

Judge : Ajit Kumar Sen Gupta, J.

Acts : [Customs Act, 1962](#) - Sections 25(1) 49, 111, 112, 115(1), 115(2) and 125; ;
[Customs Tariff Act, 1975](#) - Section 3; ;[Finance Act, 1984](#); ;Imports and Exports
(Control) Act, 1947 - Sections 3 and 3(2); ;Imports (Control) Order, 1955; ;Imports
and Exports Control Order, 1947

Appellant : In Re: S.S. Kothari

Advocate for Def. : Taher Ali, Adv.

Advocate for Pet/Ap. : H.K. Dev Burman, ;P.K. Mullick Ranjan Deb and
;Surendra Dube, Advs.

Judgement :

ORDER

The importation of the motor car along with fittings worth Rs. 1,20,973.73 without a valid licence is prohibited under Section 111 of the Customs Act read with Section 3 of the Imports & Exports (Control) Act of 1947 as amended and Government of India, Ministry of Commerce & Industry's Order No. 17/55, dated 17-12-1955. I, accordingly, confiscate the goods under Section 111(d) of the [Customs Act, 1962](#). In lieu of confiscation the importers are however, given the option under Section

125 ibid., to clear the goods on payment of a fine of Rs. 1,20,000/- (Rupees one lakh twenty thousand only) within 15 days from the date of issue of this order.'

20. There are two other cars which have been imported by two different persons, one by Shankarlal Sharaf, the other by Gobindlal Agarwalla. The cars were Toyota Cressider and Honda. Both the cars were gifted by one Atu Balani of Hongkong. It appears that no enquiry was made of the circumstances under which Atu Balani allegedly gifted two cars, one Honda and the other Toyota, to the aforesaid two persons. They are not related. But after the adjudication was made in those two cases by the then Collector of Customs, the cars were released upon payment of fine of Rs. 1,00,000/- in each of the aforesaid two cases. The Collector accepted the story in those two cases that those were unsolicited gifts from one Atu Balani.

21. In another case, one Jagmohan Jindal imported a car. It appears that the case was adjudicated by the Deputy Collector (P) on 26th December, 1983. The order was issued on 15th February, 1984,. The car was allowed to be released upon payment of fine of Rs. 70,000/-. This file was however not produced before me but the aforesaid facts and figures were submitted by Mr. Taher Ali, learned Advocate appearing for the respondents.

22. It appears from the note reproduced above that the Collector and the Deputy Collector (P) released the car on redemption fine and as such the Deputy Collector (N) also released the car, although in one case where the Deputy Collector (N) passed the order on 10th May, 1984, no reason at all was given

23. In those cases no reason has been given why the discretion has been exercised in releasing the car upon payment of redemption fine. Although the present' Collector of Customs was also the Collector of Customs when the aforesaid two or three orders have been passed, he did not take any steps for revocation of the said order if according to him that' such orders would open the 'floodgates of more and more imports of such items'. This, in. my view, is no ground for withholding the release of the goods on payment of redemption fine. It is a gift from the father to the son. The father is a non-resident and has been residing in Japan. In two cases where there were gifts from the father to the daughter or the son as- the case may be the cars have been released without

raising any objection. In two other cases of gift no enquiry was made although there was no relationship at all between the alleged donor and the donees. I, therefore, fail to understand how the Collector in this instant case could) stop the release of the goods holding that he is not 'legally bound to give an option to the importer to clear the car with its fittings on payment of fine.' If gifts is a ground of release of the foreign cars in four cases, why it is not so in this case, is not known. Whether such decision is based on the 'instruction of the Board or on the view of the Collector not being legally bound by the precedent and practice, previous orders and decisions, such decision cannot be sustained. The respondents cannot act differently in identical set of circumstances.

24. It appears from the records that the valuation of the car and its attachments was determined at Rs. 64,205.82 and accepted by the authorities. The Assistant Collector, Appraising Group-7, was directed to issue a show cause notice. Under the Notification No. 250-Cus., dated the 27th August, 1983 the Deputy Collector was empowered to exercise jurisdiction under Section 125 of the said Act as the adjudicating authority in respect of the said car. That is why he directed the Assistant Collector to issue the show cause notice. The show cause notice was issued on 18th August, 1984 by the Assistant Collector directing the petitioner to show cause in writing to the Deputy Collector of Customs, for appraising. The petitioner thereafter came to this Court and order was passed by me on 24th August, 1984. It appears from the records that the petitioner wrote a letter asking for personal hearing. The personal hearing was fixed on 28th August, 1984. The Assistant Collector thereafter discussed the matter with the Deputy Collector (P) and obtained his verbal orders. The following note is found on record :-

'As regards the M.O.P. its percentage has to be decided on the basis of the present market price on such car in India in terms of Section 125 of C.A. 62.'

The Officer gave a note that the valuation of a similar type of car in the present market would amount to Rs. 2,90,000/- to Rs. 3,00,000/- and the total amount of customs duties will come to Rs. 1,26,000/- and on the basis the M.O.P. would work out to approximately 165% to 175%. Then the Deputy Collector gave the following note.

'If the car is allowed to be cleared on a redemption fine the likely fine amount may exceed Rupees .one lac. Therefore, the case may be heard and adjudicated by Collr. Sd-28.8.'

25. The Deputy Collector of Customs who heard the matter himself on earlier occasion released the imported car on payment of redemption fine. When the petitioner went to the Customs House on 28th August, 1984, he was informed that the jurisdiction was taken away from the Deputy Collector and the Collector heard the matter himself. It appears to me that a ground was made out so that the Deputy Collector did not hear the matter. That is why valuation without any material of basis was sought to be given on the car and its attachment. Since the valuation at Rs. 64,205/- was accepted by the authorities, the show cause notice was issued by the Assistant Collector at the direction of the Deputy Collector so that the matter could be heard by him. He would have been bound by his own earlier order. It is only to take the matter out of his hand, the manoeuvring was made and the matter was taken to the Collector of Customs. The reasons are obvious. The Collector did not want that the Deputy Collector should hear the matter; he would be bound by the previous decision. This clearly manifests bias. The Collector of Customs after the adjudication Wrote a letter to the Central Board of Customs, New Delhi on 6th September, 1984 stating therein, inter alia, as follows :-

'The Board has recently issued an instruction for not releasing cars imported without a C.C.P., on redemption fine. I have, however, decided the case independently and have come to the conclusion that release of such foreign cars imported without a customs clearance permit will be against the economic interest of the country and have confiscated the car absolutely. The adjudication order has been issued on 30-8-1984. A copy of my adjudication order is enclosed.'

26. It is, therefore, evident that the Collector of Customs did not exercise his discretion fairly and reasonably and independently. He has acted on the basis of the instruction of the Board which however has not been disclosed before this Court. Having regard to the facts and circumstances of the case, the allegations of mala fide cannot be ruled out. In none of the other cases after the order of

adjudication was passed either by the Deputy Collector or the Collector the Board was informed of such release. It does not also appear from the records that the Board asked for any report on the release of the foreign cars on payment of redemption fine. I have no doubt in my mind that it was decided before adjudication that under no circumstances the car would be released to the petitioner on redemption fine.

27. For the aforesaid reasons I set aside the order of Collector of Customs dated 30th August, 1984 and direct him to pass a fresh order allowing the option to the petitioner to release the car on payment of redemption fine. The Collector shall impose such fine as he thinks fit and proper having regard to all other similar cases where redemption fine was imposed. The Collector of Customs shall determine the quantum of fine within three days from the date of the communication of this order. The car shall be released upon payment by the petitioner of such duty as has been determined in the case of other importers referred to above and in particular in terms of the Notification No. 831-Cus., dated 18th June, 1977. The car shall be released within 3 days from the date of payment of the assessed duty and the redemption fine as may be imposed by the Collector of Customs.

28. Let a plain copy of the order, countersigned by an officer of this Court, be handed over to the learned Advocate appearing for the party.

29. Having regard to the facts and circumstances of the case the prayer for stay is refused.