

Collector Of Central Excise And Land Customs

v.

Sanawarmal Purohit

(Supreme Court Of India)

HON'BLE JUSTICE J. C. SHAH HON'BLE JUSTICE VAIDYNATHIER  
RAMASWAMI HON'BLE JUSTICE G. K. MITTER

Civil Appeal No. 1862 And 1868 Of 1967 | 16-12-1968

J.C. SHAH, J.

1. On August 9, 1961 motor-car bearing No. ASA-8688 and belonging to Hariprasad Tharad respondent in Appeal No. 1868 of 1967 was searched by the Land Customs Officer at Ulubari Police Check-post, and from the baggage compartment two packages of cinnamon suspected to be unlawfully imported from Pakistan were found. The motor-car and the packages were attached by the Land Customs Officer. The packages of cinnamon were claimed by Sanawarmal Purohit respondent in Appeal No. 1862 of 1967 as belonging to him. Notices were issued by the Collector, Central Excise & Land Customs, Shillong, requiring Tharad, Purohit and certain other persons to show cause why the motor-car, the packages of cinnamon and other articles attached should not be forfeited under Section 5(8) and Section 7(1) of the Land Customs Act, 1924, and Section 167(8) of the Sea Customs Act, 1878 read with Section 19 of the Sea Customs Act, 1878, as made applicable by Section 8(2) of the Imports and Exports (Control) Act, 1947. In response to the notice Tharad contended that at the request of Purohit the two packages of cinnamon were loaded in his motor-car which was to proceed from Shillong to Gauhati, and that he had not infringed the law. Purohit submitted that he had purchased the two packages of cinnamon from a firm of grocers M/s. Dayalji Bhanwanji of 12/13 Amarotolla Street, Calcutta, with a view to sell them at Shillong, but when he found that he could not get even the price for which the goods had been purchased at Calcutta he decided to bring the two packages to Gauhati, and on the way the motor-car was stopped by the Land Customs Officer and the packages of cinnamon were attached. Purohit relied upon the cash memo issued by M/s. Dayalji Bhanwanji for sale of two packages of cinnamon "Jhunk Brand China" for Rs. 1,998/18-. Purohit also stated that he had on August 6, 1961, travelled in a second class vehicle of the Assam State Transport from Pandu to Shillong with the two bags

of cinnamon and tendered a receipt showing that he had purchased a ticket for that purpose.

2. A copy of a statement purporting to have been made by a representative of M/s. Dayalji Bhawanji was sent on February 3, 1962 to Tharad but not to Purohit. An enquiry was held before the Collector of Customs on February 5, 1962. At the hearing Tharad and Purohit were called upon to explain certain discrepancies between the statement made by Purohit and the information collected by the Customs Department. On February 18, 1962, two packages of cinnamon were inspected by the Collector of Customs in the presence of the lawyer of Tharad and Purohit. The Collector found that the words - "Chittagong - produce of China" were inscribed on the jute covering of the packages, and that there was some inscription on the outer covering of both the packages and the writing on one of them could be clearly read as "Bhaibab", "Chandpub" which are places in Pakistan. In the view of the Collector these markings were suggestive of the route by which the cinnamon packages might have been transported after their import at Chittagong (Pakistan). Enquiries were also made about the second class ticket No. 04959 issued by the Assam State Transport, Shillong. The Collector, it is claimed, learned that the ticket was issued in the name of A. Singh and Luggage by Bill No. 11791 dated August 6, 1961, for 11 maunds 25 seers was also issued in the name, and that the clerk of the Assam State Transport, Shillong, who issued a receipt for the ticket produced by Purohit, was persuaded to issue the receipt by misrepresentation of the true facts. The Collector of Customs by his letter dated February 14, 1962, called upon Purohit to explain the discrepancy and to make his statement, if any, in that behalf. Purohit by his letter dated February 16, 1962, urged that evidence which was not disclosed of the hearing and which was not relied upon in the show cause notice could not be legally used against him, and submitted that the ticket for his journey from Pandu to Shillong was purchased through one Madho who had accompanied him from Calcutta. He also claimed that he should be given an opportunity to cross-examine the clerk who had made the statement. The Collector gave no hearing thereafter to Tharad and Purohit, and on May 24, 1962, passed an order confiscating the two packages of cinnamon under Section 167(8) of the Sea Customs Act, 1878, read with Section 19 as made applicable by Section 3(2) of the Imports and Exports (Control) Act, 1947, and imposed a penalty of Rs. 2,500/- on Purohit under Section 167(8) of the Sea Customs Act, 1878, and in respect of the motor-car he imposed a fine of Rs. 1,000/- upon Tharad with an option to redeem the motor-car.

3. Tharad and Purohit then moved the High Court of Assam and Nagaland at Gauhati by separate petitions for writs of certiorari quashing the order of the Collector. They pleaded that the action of the Collector was vitiated because that officer had failed to hold an inquiry in the manner consistent with the rules of natural justice. The High Court upheld the contention raised in the petitioners and set aside the orders of attachment and penalty. Against the orders passed by the High Court, with certificate, these two appeals have been preferred.

4. The orders passed by the Collector of Customs were appealable by virtue of Section 188 of the Sea Customs Act 8 of 1878 read with Section 9 and the Schedule to the Land Customs Act, 1924. But the existence of a right of appeal does not bar the jurisdiction of the High Court to entertain, in appropriate cases, a petition for the issue of a writ of certiorari. Ordinarily the High Court will decline to interfere until the party claiming to be aggrieved by the order of a quasi-judicial authority has exhausted the other remedies, if any, available to him. The rule that before a writ of certiorari is claimed, an aggrieved party should exhaust the statutory remedies is one of convenience and not a rule of law. If the inferior tribunal has acted without, or patently in excess of, jurisdiction, or has conducted the proceeding before it in a manner contrary to the rules of natural justice, or offending the sense of justice and fair play, the High Court would be competent to exercise its power to issue the prerogative writ of certiorari to correct the order of the court or tribunal, even if an appeal to a departmental authority or tribunal was open and the aggrieved party did not avail himself of that remedy.

5. On a review of the evidence, we have no doubt that the High Court was right in holding that the proceedings of the Collector of Customs were vitiated because they infringed the rules of natural justice. The Collector of Customs founded his conclusion on three principal circumstances : (1) that there was discrepancy between the vouchers produced by Purohit for the alleged purchase of the two packages of cinnamon from M/s. Dayalji Bhawanji and the explanation given by him in reply to the show cause notice; (2) the existence of certain markings on the packages which were inspected in the presence of the lawyer of Purohit; and (3) the story that Purohit had travelled from Pandu to Shillong on the night of August 6, 1961, with the two packages of cinnamon was not supported by the record of the Assam Transport Department. These

circumstances may undoubtedly be relied upon by the Collector in support of his conclusion. But before his conclusion could be founded thereon, it was necessary for the Collector of Customs to hold an enquiry in which due notice of those circumstances was given, and the offenders were given an opportunity to meet the inferences arising therefrom and to comment thereon. A statement of some employee or a partner of M/s. Dayalji Bhawanji was recorded by the Customs authorities. It is said that a copy of that statement was sent to Tharad on February 3, 1962. It was the case of Purohit that he was not supplied a copy even after he had asked for the same, and not even the name of the person who gave that statement was disclosed. It also appears that Purohit had requested the Collector of Customs that the person who had made the statement or the person who had recorded the statement should be kept present for examination. But neither the person who made the statement, nor the person who recorded the statement was kept present. The Collector of Customs merely recorded the explanation given by Purohit. After February 5, 1962, no sitting for enquiry was held by the Collector of Customs. It is not clear on the record whether on February 18, 1962, an opportunity was given to Tharad and Purohit to explain the markings on the packages. It appears that on February 14, 1962, a letter was addressed to Purohit setting out the information collected by the Collector of Customs about the journey by Purohit from Pandu to Shillong on August 6, 1961. Purohit protested against the use of that information collected by the authorities and claimed that he be given an opportunity to cross-examine the person who was alleged to have made that statement. No opportunity was given to him in that behalf.

6. It is true that a quasi-judicial authority is not required to hold an enquiry into a dispute before him according to the procedure followed in a Court of law. Where a tribunal which has power to make such inquiry as it thinks fit, decides a case on a matter of fact discovered by the Tribunal itself on inspecting the premises in question, it will be a breach of natural justice if it does not inform the parties and give them a chance of dealing with it. If a tribunal receives from a third party a document relevant to the subject matter of the proceedings, it should give both parties an opportunity of commenting on it: vide Halsbury's Laws of England Vol. 11, p. 66. It was the duty of the Collector of Customs to inform the persons charged before him of the charges against them with full details, the evidence in support of the charges and to give them an opportunity to meet those charges and the offences against them. A quasi-judicial authority would be acting contrary to the rules of natural justice if it acts upon information collected by it which has not been disclosed to the party

concerned and in respect of which full opportunity of meeting the inferences which arise out of it has not been given.

7. In the present case, the statement alleged to have been recorded of some person from the shop of M/s. Dayalji Bhawanji was not made available to Purohit. The name of the person who made the statement was not even disclosed. Even though a request was expressly made, the person who made the statement was not brought before the Collector of Customs for examination, and even the person who had recorded the statement did not appear before that authority. The story of Purohit that he had travelled on August 6, 1961 from Pandu to Shillong was disbelieved without giving him a hearing on the evidence collected, especially after he had insisted that the clerk who had made the statement should be examined. 8. It is again not clear whether any explanation relating to the markings on the packages from which inferences were raised was asked for.

9. The High Court was therefore right in holding that the proceedings of the Collector of Customs were vitiated because the enquiry held by the Collector violated the rules of natural justice.

10. The appeals fail and are dismissed with costs. Nothing in this order will, however, prevent the authorities, if they so desire, to hold a fresh enquiry in the manner prescribed by law. There will be one hearing free.