Assistant Collector of Customs

Vs

Charan Das Malhotra

Civil Appeal No. 1056 of 1967

(V. Bhargava, G. K. Mitter, K. S. Hegde, A. N. Grover JJ)

19.02.1971

JUDGMENT

SHELAT, J. -

1. This appeal, under a certificate, raises two questions. The first is as to the nature of the power of the Collector of Customs under the proviso to the second sub-section of Section 110 of the Customs Act, 52 of 1962 and the second is as to whether the Collector under that proviso can extend the period for giving notice under Section 124(a) of the Act either after the initial period or six months or the extended period has already expired.

2. In 1963, the respondent carried on business as a dealer in watches in the name and style of Wallton Watch Company in Calcutta. In 1955, he also used to have another business premises where he carried on the same business in the name of Walcon Watch Company. That business was wound up in that year and he had the stock-in-trade of that business transferred to his business carried on in the name of Wallton Watch Company.

3. On March 19, 1963, the rummaging staff under the appellant raided the respondent's business premises and seized 218 watches, all of foreign make. 87 of these watches, however, were released on the respondent then and there producing vouchers relating to them. Later on, 21 more watches were released on September 18, 1963 and February 27, 1964, on more vouchers having been produced. The case of the Customs authorities, however, was that he was not able to produce documentary evidence in respect of the rest of the watches, and therefore, their release was not possible.

4. On March 6, 1964, the appellant served on the respondent a notice under Section 124(a) to show cause why the rest of the said watches should not be confiscated and personal penalty should not be imposed upon him. Watches imported without licence or on which proper import duty has not been paid are undoubtedly liable to confiscation under Section 111(d).

5. Section 110, which finds its place in Chapter XIII dealing with searches, seizure and arrest, provides for seizure, inter alia, of goods. Under sub-section (1), if a proper officer has "reason to believe" that any goods are liable to confiscation under the Act, he may seize such goods. Sub-section (2) reads as follows :

"(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of Section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized :

Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Collector of Customs for a period not exceeding six month."

Section 124 provides that no order confiscating any goods or imposing any penalty on any person shall be made unless the owner of the goods or such person is given a notice in writing informing him of the ground on which it is proposed to confiscate the goods or to impose a penalty. The section does not lay down any period within which the notice required by it has to be given. The period laid down in Section 110(2) affects only the seizure of the goods and not the validity of the notice.

6. Since the watches in question were seized on March 19, 1963, the initial period of six months provide under the second sub-section of Section 110 expired on September 19, 1963, and the respondent became entitled to the return of the said watches as no show-cause notice had till then been issued to him. But the appellant's case was that an extension for a further period of four months was applied for and was granted by the Collector on September 19, 1963, under his power under the said proviso on the ground that certain inquires at Bombay and Delhi yet remained to be made. The extended period of four months expired on January 19, 1964, and a further extension of two months was applied for on January 3, 1964. But the Collector passed his order granting further extension on February 20, 1964, that is to say, about a month after the first extended period had expired.

7. Admittedly, both the extension orders were passed ex parte and without any opportunity of being hear having been given to the respondent. The respondent, therefore, got no chance to resist either of the two applications for extension and to show that no sufficient cause had been shown, and that therefore, no order of extension was justified or should be granted, and the watches should, as provided by Section 110(2), be restored to him. He also got no opportunity to plead before the Collector that the right to have the watches restored to him having already accrued to him on January 19, 1964, it could not be defeated by an order of extension passed after the first extended period had already lapsed.

8. Aggrieved by the two orders of extension passed in the manner aforesaid, the respondent moved the High Court of Calcutta under Article 226 of the Constitution, contending that the proviso to Section 110(2) envisaged only one extension, and that, therefore, the second extension was invalid. The learned single Judge, who heard the writ petition, rejected this contention holding that the proviso empowered the Collector to grant as many extensions as the completion of the inquiry and the issuance of the notice under Section 124(a) required but in no case exceeding six months at a time. The second contention urged by the respondent was that the period of the first extension having expired on January 19, 1964, and no further extension having been granted by that date, he became entitled to restoration of the said watches and the second order extending the period by two months more granted a month after the expiry of the first extended period would be of no avail to the Customs authorities. This contention too was rejected on the ground that where there is a prescribed time for doing a thing but an express power is given to an authority to extend that time, such power can be exercised even after the prescribed time has expired unless there is an express provision prohibiting to do so. There was no such provision. The learned Single Judge also held that there was no need to give to the respondent any notice of the applications for extension, the only requirement being that a sufficient cause had to be shown to the satisfaction of the Collector. The learned Judge also rejected a third contention by the respondent that in the absence of any information with the Customs Officers as regards the watches save that they were of foreign manufacture, they could not have entertained any reasonable belief that their importation was country to or in violation of any statutory provision. This contention was rejected on the strength of

the supplemental affidavits of the Customs Officers ordered by the learned Judge. The result was that the learned Judge dismissed the writ petition negativing, inter alia the respondent's plea to the restoration of the seized watches.

9. On an appeal by the respondent, a Division Bench of that High Court took contrary view. It held that the watches having been seized on March 19, 1963, the period of six months expired on September 18, 1963, that if a notice under Section 124(a) was not given by that time, Section 110(2) imposed a statutory obligation on the Customs to return the goods to the person from whom they were seized. The Division Bench observed that even assuming that the first extension which was granted ex parte and without any opportunity to the respondent of being heard were to be valid, the period of four months granted then having expired on January 19, 1964, and no order for further extension having admittedly been made, it was obligatory on the Customs to return the watches to the respondent. There being such a statutory obligation under Section 110(2), there was a corresponding statutory right in the respondent to have them restored to him. The Division Bench was of the view that such a right having accrued to the respondent, it could not be defeated by an order passed one month after the lapse, of the first extended period. It also held that the words "sufficient cause being shown" used in the proviso meant that the Collector has to decide an application for extension judicially, the reason being that was shown without hearing the pros and cons of the question, and therefore, he had no jurisdiction to grant extension without giving to the respondent an opportunity of being heard. In this connection the Division Bench observed :

"As long as the period of issuing notice has not expired, it might be one thing. But quite a different set of circumstances arise when the period has expired and the right to the return of the good is vested in the person from whose possession the goods are seized. If you are to take away the right you can only do that for a "sufficient cause". How can the officer concerned decide as to whether a "sufficient cause" has been shown, so as to divest a vested right, unless he hears the parties affected. Even after the supplementary affidavits were filed in this case, it is extremely doubtful whether a sufficient cause has been shown."

According to the Division Bench, even if the Collector's function under the proviso were to be treated as an administrative functions, his authority being to determine the question affecting the rights of the citizen, there was an implied duty to act judicially. On this reasoning, the Division Bench held that in any event the second order of extension was bad. It also found that the show-cause notice issued under Section 124(a) was vague, gave no opportunity to the respondent to explain the allegations contained therein, and therefore, was therefore, was bad, with the result that the appellant would be required to give a fresh notice. For the reason above stated, the Division Bench reversed the judgment of the single Judge and allowed the writ petition. The correctness of this judgment is the subject-matter of this appeal.

10. We may at this stage mention that counsel for appellant formulated the following two contentions only :

(1) that the liability to return the goods seized under Section 110(1) on the expiry of the time prescribed under sub-section (2) is not absolute as it is subject to the period being extended for a period not exceeding six months, that is to say, within the over all period of one year; that therefore, there is no question of any right being vested in the respondent or the expiry of the first six months or the extended period of such right being divested until one year from the date of seizure has expired; and

(2) that, the proviso to Section 110(2) does not contemplate any notice to the respondent as the considerations which would weigh with the Collector or which would be relevant for granting extension would be of such a nature that they could not be disclosed, such disclosure being against public interest; that only two requirements are envisaged for the extension of time and they are : (i) that a sufficient cause is shown and (ii) that the extension is within one year.

11. As already stated, sub-section (1) of Section 110 authorises seizure, the only requirement being a reasonable belief on the part of the concerned officer at the time of seizure. The power of seizure founded on a mere reasonable belief being obviously an extraordinary power, the second sub-section envisages completion of the enquiry within a period of six months from the date of seizure. But it provides that if such an enquiry is not completed within that period and a notice under Section 124(a) is, therefore, not given, the person from whom the goods are seized becomes entitled to their restoration. However, on the supposition that in some cases such an investigation may not be completed owing to some difficulties, the Legislature gave under the proviso power to the Collector, an officer superior in rank and also an appellant authority under Section 128, to extend the time on two conditions, namely : (1) it does not exceed one year and (2) on sufficient cause being shown. The policy of the Legislature, therefore, clearly was that in view of the extraordinary power of seizure the enquiry should ordinarily be completed within six months but since it might not be possible to do so in some cases, it gave power of extension to the collector The Legislature was thus careful to entrust the power of extension to a superior officer who also has the power to hear inquires under the Act involving penal consequences and also appeals. Cases where extension would have to be asked for and granted are thus envisaged as exceptions to the general rule of six months laid down in sub-section (2). The second limitation to the power is that such extension can be granted only on sufficient cause being shown, a phrase often used in provision for condonation of delay, such as Section 5 of the Limitation Act, 1908.

12. There can be no doubt that the proviso to the second sub-section of Section 110 contemplates some sort of inquiry. The Collector, obviously, is expected not to pass extension orders mechanically or as a matter of routine, but only on being satisfied that there exist facts which indicate that the investigation could not be completed for bona fide reasons within the time laid down in Section 110(2), and that therefore, extension of that period has become necessary. He cannot, therefore, extend the time unless he is satisfied on facts placed before him that there is a sufficient cause necessitating extension. The burden of proof in such an inquiry is clearly on the Customs Officer applying for extension and not on the person from whom the goods are seized.

13. The question, therefore, is as to the nature of such a function and power entrusted to and conferred on the Collector by the proviso. It will be noticed that whereas sub-section (1) of Section 110 uses the expression "reason to believe" for enabling a Customs Officer to seize goods, the proviso to sub-section (2) uses the expression "sufficient cause being shown". It would seem that sub-section (1) does not contemplate an inquiry at the stage of seizure, the only requirement being the satisfaction of the concerned officer that there are reasons to believe that the goods are liable to confiscation by reasons to believe that the goods are liable to confiscation by reason of their illegal importation. Even so, such satisfaction, as laid down in Narayanappa v. Commissioner of Income-Tax, Bangalore, (63 ITR 219) is not absolutely subjective inasmuch as the reasons for his belief have to be relevant and not extraneous. It is clear that the Legislature was not prepared to use that same language which giving power to the Collector to extend time and deliberately used the expression "sufficient cause being shown". The point is why should the Legislature have used such a different expression while enacting the proviso if its intention was to confer power which would depend on a mere subjective satisfaction as to the cause for extension. The words "sufficient cause

being shown" must mean that the Collector must determine on materials placed before him that they warrant extension of time. Where an order is made in bona fide exercise of power and within the provisions of the Act which confers such power, the order undoubtedly is immune from interference by a Court of law, and therefore, the adequacy of the cause shown may not be a ground for such interference. But there can be no doubt at the same time that the inquiry to be held by the Collector has to be no facts, i.e., materials placed before him. There is therefore, for, what he is asked to do by the proviso is to determine that the cause shown before him warrants an extension of time.

14. In Lakhanpal's case, (AIR 1967 SC 1507 : (1967) 3 SCR 114 : (1968) 1 SCJ 397 : (1967) 2 SCA 309 : 1967 Cr LJ 1390.)this Court notice a similar difference of language used in Rules 30(1)(b) and 30-A(9) of the Defence of India Rules, 1962, which dealt with two different types of powers. Though it was a case dealing with preventive detention, what is important is that the decision primarily depended on the different in language used in the two rulers and the difference it made in the character of the two powers. A similar expression, though not exactly the same, also came to be construed by the House of Lords in De Verteuil v. Knaggs and Another, (1918 AC 557.) a case often referred to while determining the nature of power. The question which arose there was whether under Section 203 of the Trinidad Immigration Ordinance No. 161, the Government could pass as order transferring indentured labour from one employer to another without notice to the concerned employer against whom complaints as to treatment of the labourers were made. The section provided that if at any time "it appears to the Governor on sufficient ground shown to his satisfaction, that all or any of the immigrants indentured on any plantation should be removed therefrom, it shall be lawful for him to transfer the indentures of such immigrants - to any other employer." Construing this provision, Lord Parmoor observed at p. 560. of the report :

"The Ordinance does not prescribe any special form of procedure, but there is an obvious implication that some form of inquiry must be made, such as will enable the Governor fairly to determine whether a sufficient ground has been shown to his satisfaction for the removed of indentured immigrants - that is the procedure which in such a case the law will imply when the Legislature is silent ? The acting Governor was not called upon to give a decision on an appeal between parties, and it is not suggested that he holds the position of a judge or that the appellant is entitled to insist on the forms used in ordinary judicial procedure - On the other hand, the acting Governor could not properly carry through the duty entrusted to him without making some inquiry whether sufficient grounds had been shown to his satisfaction that immigrants indentured on the La Glaria estate of the appellant should be removed. Their Lordships are of opinion that in making such an inquiry there is, apart from special circumstances, a duty of giving to any person against whom the complaint is made a fair opportunity to make any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice."

In Kraipak v. Union of India, (1969(2) SCC 262 : (1970) 1 SCR 457.) the power of a selection board to prepare a selection list from amongst the public servants for appointment in the senior and junior scales was held to be quasi-judicial although the board had no power of appointment itself. In doing so, this Court observed that the dividing line between judicial and administrative functions was thin and gradually evaporating, and that the functions performed by those doing judicial function and administrative function, where the rights of citizens' are affected to their prejudice, had the same object, namely, to do justice and deciding the question fairly and justly. In the former case, there would be express rulers of procedure, but the object of those rulers is only to enable or facilitate to decide fairly and justly. The Court also pointed out that in recent years the concept of quasi-judicial power has been undergoing a radical change and noted with approval the decision in

Regina v. Criminal Injuries Compensation Board, ex parte Lain, ((1967) 2 Q B 864.) where it was held that certiorari would be available not only where the impugned order infringes immediately enforceable rights but also where it is a step as a result of which legally enforceable rights may be affected. If the power of preparing a selection list without the power to appoint, as in Kraipak's case (supra) and power to transfer indentured labour from one to another employer, as in De Verteuil v. Knags, (supra) are held, in the context of their respective provisions, to be quasi-judicial powers, there is no reason why, when the statute requires the dermination of a sufficient cause on facts produced before the Collector should be held not be to be a quasi-judicial functions or at least a function requiring judicial approach.

15. But it may be said that in both those cases there was a civil right involved and the power, therefore, had to be held quasi-judicial. But in the present case also, the right to restoration of the seized goods is a civil right which accrues on the expiry of the initial six months and which is defeated on an extension being granted, even though such extension is possible within a year from the date of the seizure. Since the Collector has on facts to decide on the existence of a sufficient cause, although his decision as to sufficiency of materials before him may be within his exclusive jurisdiction, it is nonetheless difficult to comprehend how he can come to his determination unless, as the Division Bench of the High Court has said, he has before him the pros and cons of the question. An ex parte determination by the Collector would expose his decision to be one sided and perhaps one based on an incorrect statement of facts. How then can it be said that his determination that a sufficient cause exists is just and fair if he has before him a one sided picture without any means to check it unless there is an opportunity to the other side to correct or controvert it. The difference in the language used in the first sub-section and the proviso to sub-section (2) lends support to the contention that the power in one case may be subjective, and therefore, not calling for an enquiry, and the power in the other is one, the exercise of which necessitates an enquiry into the materials placed before the Collector for his determination. In our view, these considerations lead to the conclusion that the power under the proviso is not to be exercised without an opportunity of being heard given to the person from whom the goods are seized.

16. In a recent decision in Sheikh Mohammed Sayeed v. Assistant Collector of Customs, (AIR 1970 Cal 134.) a contrary view has, however, been taken by a single Judge of the High Court of Calcutta. The extension order there was passed before the expiry of the initial six months' period. But the contention raised was that an opportunity to be heard should have been given to the petitioner. The learned Judge distinguished the decision of the Division Bench under this appeal (reported in AIR 1968 Cal 28), on the ground that the question involved in that decision was whether an opportunity of being heard had to be given in respect only of an extension when the right to restoration of the goods in question has already accrued to the party from whom they were seized, and therefore, the decision did not apply to the case before him when such a right had not vested in the petitioner. With respect to the learned Judge, the distinction was not correct, firstly, because the first order of extension was only assured to be correct as the Division Bench concentrated its attention on the second order of extension which also involved the question of the right to restoration of the goods having already vested; and secondly, because the Division Bench set aside the extension order on the ground that the power of extension was quasi-judicial or at any rate one which required a judicial approach. The latter ground applied to both the orders, and therefore, if the second order of extension was bad, the first was for the same reason necessarily bad. The order of extension in both the cases would deprive the person from whom the goods ware seized of the right to have goods restored to him on the expiry of six months from the date of seizure. As for his decision on the nature of the power, the learned Judge relied on decision in Collector of Customs v. N. Sampathu Chetty; (AIR 1962 SC 316 : (1962) 1 SCJ 68, etc.) Babulal] Amthalal v. Collector of Customs,

(AIR 1957 SC 877 : (1957) SCJ 828 : (1958) SCA 13.) Pukhraj v.Kohli (AIR 1962 SC 1559 : (1964) 1 SCJ 281 : 65 Bom LR 281.) and Nathmal falan v. Additional Collector of Customs, (70 CWN 349.) which were all cases where the exercise of power depended on reasonable belief or reasons to believe. But he had that the power under the proviso to Section 110(2) should be construed on the same principles laid down in those decisions. This is made clear at page 141 of the report where he observed :

"In my view the same principles are attracted in construing the phrase 'on sufficient cause being shown'-With regard to the nature and sufficiency of the cause, it is the satisfaction of the Collector of Customs that provides the ground and justification for an order extending the time to complete the enquiry - If the order of extension is made before expiry of the initial period of six months, or before expiry of the extended period, it cannot in my view be challenged on the ground that notice to show cause, or opportunity of being heard was not given to the party."

In our view, equating the power, the exercise of which depends on a mere reasonable belief, with the power, the exercise of which depends on 'sufficient cause being show' envisaging at least some sort of enquiry on facts placed before the authority and determination by him on those facts, is not warranted. Therefore, a conclusion based on such a premise creates difficulty in sustaining it. Further, the distinction between an order extending before and after the expiry of the initial or the extended period does not make any difference as was sought to be made by the learned Judge when one enquires into the character of the power of extension. Both would raise precisely the same question, whether the power is purely administrative requiring no opportunity of being heard or judicial or quasi-judicial, as in both the cases the right to the goods being restored would be involved. We cannot also agree with the learned Judge that there is no indication in the Act to suggest that the Collector is required to act judicially, firstly, because the proviso requires determination on facts and not on mere suspicion and a sufficient cause being made out by the applicant officer and secondly, because a civil right of a citizen to the restoration of the goods on expiry of the period, whether initial or extended is affected.

17. The other decision, which takes a contrary view, is of the High Court of Mysore in Ganeshmul Channilal Gandhi v. Collector of Central Excise. (AIR 1968 Mys 89.) The grounds on which the learned Judge there took that view were : (1) that the power was administrative and (2) that if notice were to be necessary, the authority which applies for extension would have to make a disclosure about the investigation, which disclosure would have be detrimental to the investigation itself. For the reason already given we cannot agree with the first ground. As for the second ground, we do not see any reason for the apprehension. So far as the initial period of six months is concerned, there is no question of disclosure of the investigation. The Legislature itself contemplated that ordinarily such an investigation would be completed within that period. The question of disclosure would arise only in cases where for bona fide reasons something yet remains to be done. The only disclosure in such cases would be about the fact that investigation at some place of place, or about certain matters is still incomplete and pending. No one suggests that the enquiry to be held by the Collector would be similar to the one held in a Court of law or that the officer applying for extension would be compelled to disclose the name of his informants or such order matters which would be detrimental to the investigation. Even in more serious matters, such as applications for remand in original cases, opportunity to be heard has to be given. No one has yet suggested that such an opportunity is detrimental to the investigation. The unreported judgment of the High Court of Bombay in M/s. Prakash Cotton Mills Pvt. Ltd., v. Assistant Collector of Central Excise, Bombay, (Misc Petition No. 127 of 1963, decided on August 31, 1970.) does not throw any further light as it is mostly based on the reasoning of the Mysore High Court. We are not satisfied that as between the right to the person

from whom the goods are seized and the supposed danger to the investigation the matter is so weighted down that we would be compelled to hold that the Legislature could not possibly have contemplated a judicial approach by the Collector when he orders extension of time, the effect of which would be the deprivation of, or in any event, postponement of the right to restoration. In our view, the first question must be answered in favour of the respondent, and therefore, the Division Bench was right in holding that the power under the proviso was quasi-judicial, or at any rate, one requiring a judicial approach. Consequently, an opportunity of being heard ought to have been given to the respondent before orders for extension were made. The High Court, consequently, was justified in ordering restoration of the watches in question to the respondent.

18. In this view it is not necessary for us to decide the second question raised by counsel for the respondent. We are also not dealing with the question as to whether the notice under Section 124(a) was vague, and therefore, void as decided by the Division Bench. That part of the decision of the High Court was not challenged before us, and therefore, we are not called upon to give our decision on that part of the case.

19. In the result, the judgment of the Division Bench has to be upheld. The appeal will stand dismissed with costs.

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