I. J. Rao, Asstt. Collector of Customs and Others

Vs

Bibhuti Bhushan Bagh and Another

Civil Appeal No. 1529 of 1971

(CJI R. S. Pathak, S. Natarajan, Rangath Misra, M. H. KaniaE. S. Vankataramiah JJ)

12.05.1989

JUDGMENT

PATHAK, C. J. –

1. This appeal by certificate granted by the High Court of Calcutta is directed against the judgment dated July 31, 1970 of that High Court partly allowing a writ petition arising out of proceedings under the Customs Act, 1962.

2. On May 5, 1966, noticing an advertisement in a newspaper offering imported manual and electric typewriters, adding and calculating machines, the customs authorities raided the premises of Messrs Typewriters and Stationery Operation Private Limited, Calcutta, on the same day and recovered fifteen typewriters, adding and calculating machines. The machines had been sold to the company by R. N. Bagh, who in turn disclosed that he had purchased them from the crew members of some vessels. On May 7, 1966, the Customs Officers searched the residence and business premises of Messrs Central Typewriter Company and recovered several typewriters and calculating and adding machines. From some documents seized during the raid and statements recorded, it appeared that there was a conspiracy between the respondents and some of the crew members of certain vessels where it was agreed that the respondents would look after and maintain the families of the crew members in India while they were abroad, would advance them money and the crew members would draw their wages abroad in foreign currency and purchase with those moneys second-hand typewriters, adding and calculating machines and then bring them to India and deliver them to the respondents after clearance under the concessions provided in the Baggage Rules in order to circumvent the restrictions imposed under the Import Trade Control Regulations. It appeared that during the period 1961 to 1965 about 200 pieces of typewriters, adding and calculating machines had been acquired by the respondents for a sum of about Rupees one lakh and out of which forty-six had been sold.

3. The goods were seized on May 5/7, 1966 and notices were due to issue under Section 124(a) of the Customs Act, 1962 within six months from that date. Meanwhile, the Subordinate Officers, Customs Department, showed cause to the Additional Collector of Customs, Calcutta (who has the same powers under the Act as the Collector) for granting an extension of time for serving the show cause notice. On November 3, 1966, the Additional Collector granted an extension of time for a further six months in terms of the proviso to Section 110(2) of the Customs Act, 1962.

4. On December 6, 1966 the Assistant Collector of Customs issued notice to each of the respondents calling upon him to show cause why the said seized machines should not be confiscated under Section 111(d) and Section 111(o) of the Customs Act, 1962 read with Section 3(2) of the Import

and Export Control Act, 1947 and why penal action should not be taken against the respondents under Section 112 of the Customs Act, 1962.

5. On April 18, 1967, the respondents filed a writ petition in the High Court at Calcutta challenging the proceedings initiated against them by the customs authorities including the seizure of the machines. On December 11, 1968 a learned Single Judge of the High Court repelled the contention of the appellants that the proceeding was administrative in nature and held that the order of extension to be made under Section 110(2) of the Customs Act was a quasi-judicial order and as the order had been made ex parte and without notice to the owner of the goods it was in breach of the principles of natural justice and therefore void. He observed that as the order, moreover, was not communicated to the respondents before the expiry of six months from the date of the seizure, the order of extension was invalid and the respondents had become entitled as of right to the return of the goods. The writ petition was allowed, and the proceedings initiated by the respondents against the appellants were quashed by the learned Single Judge by his judgment and order dated December 11, 1969.

6. The appellants appeared to the Appellate Bench and the Appellate Bench of the High Court by judgment dated July 31, 1970 allowed the appeal in part, quashing the order of extension dated November 3, 1966 and directing the appellants to restore the machines and documents seized from the respondents. The custom authorities were permitted to initiate and complete such other proceedings against the respondents as were open to them in law.

7. The appellants now appeal to this Court insofar as the judgment and order of the Appellate Bench proceeds against them.

8. Section 110(1) of the Customs Act, 1962 provides that if the proper officer has reason to believe that any goods are liable to confiscation under that Act he may seized such goods. Section 110(2) provides :

> 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 :
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> 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 months.

Section 124(a), to which reference has been made in Section 110(2), provides that no order confiscating any goods or imposing any penalty on any person shall be made under Chapter XIV unless the owner of the goods or such person is given notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty and is given an opportunity of making a representation in writing, and is also given a reasonable opportunity of being heard in the matter.

9. It is apparent that goods liable to confiscation may be seized by virtue of Section 110(1) but that those goods cannot be confiscated or penalty imposed without notice, opportunity to represent and to be heard to the owner of the goods or the person on whom penalty is proposed. This notice must be given within six months of the seizure of the goods, as envisaged by Section 110(2) of the Act, and if it is not, the goods must be returned to the person from whom the goods were seized. The

proviso to Section 110 (2) of the Act allows the period of six months to be extended by the Collector of Customs for a period not exceeding six months on sufficient cause being shown to him in that behalf.

10. The Appellate Bench of the High Court is of opinion that the decision of the High Court in Assistant Collector of Customs v. Charan Das Malhotra ((1971) 1 SCC 697 : 1971 SCC (Cri) 321 : (1971) 3 SCR 802) lays down the correct law and applies to the facts of this case, that there is a duty on the part of the Collector of Customs to act judicially in exercising the power conferred under the proviso to Section 110(2) of the Act and that, therefore, notice should have gone to the owner of the goods before the extension was ordered under the proviso. It has been held further that the order of extension should have been communicated to the owner and as that was not done the order was ineffective.

11. When this appeal came up for hearing before a bench of this Court, reliance was placed by learned counsel for the respondents on Charan Das Malhotra ((1971) 1 SCC 697 : 1971 SCC (Cri) 321 : (1971) 3 SCR 802). That decision was rendered by two learned Judges of this Court. Reference was also made in M/s Lokenath Tolaram v. B. N. Rangwani ((1974) 3 SCC 575 : 1974 SCC (Cri) 53 : (1974) 2 SCR 199), which was a decision rendered by four learned Judges of this Court, and in which reference was made to Charan Das Malhotra (1971) 1 SCC 697 : 1971 SCC (Cri) 321 : (1971) 3 SCR 802). The learned Judges hearing this appeal were of the opinion that the view taken in the two cases required reconsideration, and therefore this appeal was referred to a larger bench for a decision on the question whether the Collector is bound to issue notice to the persons from whose possession the goods are seized and to give him an opportunity to make his representation on the point whether the time for issuing notice under Section 124(a) of the Act should be extended beyond six months. That is how the appeal has come before us.

12. In Charan Das Malhotra ((1971) 1 SCC 697 : 1971 SCC (Cri) 321 : (1971) 3 SCR 802) the court referred to the consideration that seizure was authorised under Section 110(1) on the mere "reasonable belief" of the concerned officer, that it was an extra-ordinary power and that therefore Parliament had envisaged a period of six months from the date of seizure for completing an enquiry on whether the goods should be confiscated and that if the enquiry was not completed within that period the goods must be returned. In some cases it is possible that the enquiry requires longer than six months, and accordingly power was conferred on the Collector, an officer superior in rank and also an Appellate Authority under Section 128, to extend the time subject to two conditions, that it did not exceed one year, and that sufficient cause must be shown for such extension. The court observed that the Collector was not expected to propose the extension mechanically or as a matter of routine but only on being satisfied that facts exist which indicate that the investigation could not be completed for bona fide reasons within the time provided in Section 110(2), and that therefore extension of the period has become necessary. The Collector, the court emphasized cannot extend the time unless he is satisfied on facts placed before him that there is sufficient cause necessitating extension, in which case the burden of proof would clearly lie on the customs authorities applying for extension to show that such extension was necessary. Taking these considerations into record the court held that the words "sufficient cause being shown" required an objective examination of the matter by the Collector. It was pointed out that ordinarily on the expiry of the period of six months from the date of seizure the owner of the goods would be entitled as of right to restoration of the seized goods, and that right could not be defeated without notice to him that an extension was proposed. The court rejected the contention that the continuing investigation would be jeopardised if such notice was given. The court held that the power under the proviso to Section 110(2) was quasi-judicial, at any rate one requiring a judicial approach, and consequently the person from whom the

goods were seized was entitled to notice before the period of six moths envisaged by Section 110(2) was extended. The point was considered again in M/s Lokenath Tolaram v. B. N. Rangwani ((1974) 3 SCC 575 : 1974 SCC (Cri) 53 : (1974) 2 SCR 199) by a bench of four Judges of this Court and the court referred to the view taken in Charan Das Malhotra ((1971) 1 SCC 697 : 1971 SCC (Cri) 321 : (1971) 3 SCR 802) but it declined to interfere because the appellants in that case had themselves waived notice concerning extension of the time. The court did not specifically give the stamp of approval to the law laid down in Charan Das Malhotra (1971) 1 SCC 697) : 1971 SCC (Cri) 321 : (1971) 3 SCR 802).

13. There is no doubt that the words "on sufficient cause being shown" in the proviso to Section 110(2) of the Act indicates that the Collector of Customs must apply his mind to the point whether a case for extending the period of six months is made out. What is envisaged is an objective consideration of the case and a decision to be rendered after considering the material placed before him to justify the request for extension. The Customs Officer concerned who seeks the extension must show good reason for seeking the extension, and in this behalf he would probably want to establish that the investigation is not complete and it cannot yet be said whether a final order confiscating the goods should be made or not. As more time is required for investigation, he applies for extension of time. The Collector must be satisfied that the investigation is being pursued seriously and that there is need for more time for taking it to its conclusion. The question is whether the person claiming restoration of goods is entitled to notice before time is extended. The right to notice flows not from the mere circumstance that there is a proceeding of a judicial nature, but indeed it goes beyond to the basic reason which gives to the proceeding its character, and that reason is that a right of a person may be affected and there may be prejudice to that right if he is not accorded an opportunity to put forward his case in the proceeding. In other words, the issue is whether there is a right in a person from whose possession goods are seized and which right may be prejudiced or placed in jeopardy unless he is heard in the matter. It cannot be disputed that Section 110 sub-section (2) contemplates either notice (within six months from the date of seizure) to the person from whose possession the goods have been seized in order to determine whether the goods should be confiscated or the restoration of the goods to such person on the expiry of that period. If the notice is not issued in the confiscation proceedings within six months from the date of seizure the person from whose possession the goods have been seized becomes immediately entitled to the return of the goods. It is that right to the immediate restoration of the goods upon the expiry of six months from the date of seizure that is defeated by the extension of time under the proviso to Section 110(2). When we speak of the right of the person being prejudiced or placed in jeopardy we necessarily envisage some damage or injury or hardship to that right and it becomes necessary to inquire into the nature of such damage or injury or hardship for any case to be set up by such person must indicate the damage or injury or hardship apprehended by such person. In the present case, one possibility is that the person from whose possession the goods have been seized may want to establish the need for immediate possession, having regard to the nature or the goods and the critical conditions then prevailing in the market or that the goods are such as are required urgently to meet an emergency in relation to a vocational or private need, and that any delay in restoration would cause material damage or injury or hardship either by reason of some circumstance special to the person or of market conditions or of any particular quality of requirement for the presentation of the goods. But it will not be open to him to question whether the stage of the investigation, and the need for further investigation, call for an extension of time. It is impossible to conceive that a person from whose possession the goods have been seized with a view to confiscation should be entitled to know and to monitor, how the investigation against him is proceeding, the material collected against him at that stage, and what is the utility of pursuing the investigation further. These are matters of a

confidential nature, knowledge of which such person is entitled to only upon the investigation being completed and a decision being taken to issue notice to show cause why the goods should not be confiscated. There can be no right in any person to be informed midway, during an investigation, of the material collected in the case against him. Consequently, while notice may be necessary to such person to show why time should not be extended he is not entitled to information as to the investigation which is in process. In such circumstances, the right of a persons, from whose possession the goods have been seized, to notice of the proposed extension must be conceded, but the opportunity open to him on such notice cannot extend to information concerning the nature and course of the investigation. In that sense, the opportunity which the law can contemplate upon notice to him of the application for extension must be limited by the pragmatic necessities of the case. If these considerations are kept in mind, we have no doubt that notice must issue to the person from whose possession the goods have been seized of the proposal to extend the period of six months. In the normal course, notice must go to such person before the expiry of the original period of six months. It is true that the further period of six months contemplated as the maximum period of extension is a short period but Parliament has contemplated an original period of six months only and when it has fixed upon such period it must be assumed to have taken into consideration that the further detention of the goods can produce damage or injury or hardship to the person from whose possession the goods are seized.

14. We have said that notice must go to the person, from whose possession the goods have been seized, before the expiry of the original period of six months. It is possible that while notice is issued before the expiry of that period, service of such notice may not be issued effected on the person concerned in sufficient time to enable the Collector to make the order of extension before that period expires. Service of the notice may be postponed or delayed or rendered ineffective by reason of the person sought to be served attempting to avoid service of notice or for any other reason beyond the control of the customs authorities. In that event, it would be open to the Collector, if he finds that sufficient cause has been made out before him in that behalf to extend the time beyond the original period of six months, and thereafter, after notice has been served on the person concerned, to afford a post-decisional hearing to him in order to determine whether the order of extension should be cancelled or not. Having regard to the seriousness and the magnitude of injury to the public interest in the case of the illicit importation of goods, and having regard to considerations of the damage to economic policy underlying the formulation of import and export planning, it seems necessary to reconcile the need to afford an opportunity to the person affected with the larger consideration of public interest.

15. Our attention has been drawn to Ganeshmul Channilal Gandhi v. Collector of Central Excise and Asstt. Collector, Bangalore (AIR 1968 Mys 89 : 6 Law Rep 855) where the High Court of Mysore has held that no notice is necessary to the person from whose possession the goods are seized when the Collector proceeds to consider whether the original period of six months should be extended. Reliance has also been placed on Sheikh Mohammed Sayeed v. Assistant Collector of Customs for Preventive (I) (AIR 1970 Cal 134) which proceeds on the view that the Collector has to satisfy himself only subjectively on the point whether extension is called for. In Karsandas Pepatlal Dhineja v. Union of India ((1981) ELT 268), the High Court defined the implications of the use of the words "on sufficient cause being shown" in a statutory proceeding. None of these case convince us that the person from whose possession the goods have been seized is not entitled to notice of the proposal to extend the period.

16. In our opinion, the person from whose possession the goods have been seized is entitled to notice of the proposal before the Collector of Customs for the extension of the original period of six

months mentioned in Section 110(2) of the Customs Act, and he is entitled to be heard upon such proposal but subject to the restrictions referred to earlier in regard to the need for maintaining confidentiality of the investigation proceedings.

17. The appeal is allowed accordingly and to the extent set forth in our judgment the orders of the High Court are modified, but there is no order as to costs.

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