

SUPREME COURT OF INDIA

Anirudh Singh Katoch

Vs.

Union of India

C.A.Nos.4094-96 of 2010

(R.V.Raveendran and R.M.Lodha JJ.)

05.05.2010

JUDGEMENT

R.M.Lodha, J.

1. Leave granted.

2. In these three appeals, by special leave, the core question that arises for consideration is, whether the Additional Commissioner of Customs, Indira Gandhi International Airport, New Delhi (Respondent no. 3) was justified in detaining two duly licensed firearms which the appellant brought from United States of America (USA) on transfer of his residence into India.

3. The appellant--an Indian citizen--went to USA for further studies in 1984. He graduated in Computer Science from Seattle Pacific University, Seattle, USA and worked with a Medical Instrumentation firm there. He holds licences for the possession of three firearms, namely, (1) Walther PPKS SNW007450 (NPB Pistol) (2) NPB Rifle and (3) DBBL Gun under the Arms Act, 1959 (for short, '1959 Act') and the Arms Rules, 1962 (for short, '1962 Rules'). Before coming to India, he is said to have consulted the Indian Consulate in San Francisco, USA with regard to these firearms and he was told that he was allowed to take his personal firearms to India provided he held valid Indian firearms licences. The appellant, accordingly, brought the aforesaid three firearms with him on transfer of his residence to India. The appellant arrived at the Indira Gandhi International Airport, New Delhi on October 1, 2000 with his baggage and firearms.

“He was told at the customs clearance counter that he was permitted only one firearm under the Transfer of Residence Rules and he had to obtain the firearms import licence for the other two firearms from the Director General of Foreign Trade (DGFT). All the three firearms were, thus, detained by Respondent No.3 and a detention order was issued on October 1, 2000 recording, 'detained for clearance as per Rules'. Thereafter on February 16, 2001, one of the firearms, namely, Walther

PPKS.32 ACP Handgun was released to the appellant and the other two firearms remained in the custody of the custom officials. It transpires that the appellant made an application with the DGFT on February 1, 2001 for import of the two firearms which were detained by the custom officials. On March 8, 2001, the appellant was informed by DGFT that as per the import policy, import of firearms and ammunition is not permitted except against a licence to renowned shooters/rifle clubs for their own use on the recommendation of the Department of Youth Affairs and Sports and since the application made by the appellant did not come under that category, his case has been referred to the Ministry of Home Affairs for their recommendation. The correspondence seems to have ensued between the appellant and various authorities but the two firearms were not released.

The appellant then served legal notices upon the Additional 3 Commissioner of Customs, IGI Airport, New Delhi, Deputy Director General of Foreign Trade and Ministry of Commerce.

In response thereto, the appellant received a communication dated March 26, 2001 from the DGFT informing him that he was entitled to bring only one firearm into India. The appellant thereafter approached Delhi High Court for quashing the detention order dated October 1, 2000 and the communication dated March 26, 2001 and for direction to the respondents to release his two firearms with a further direction to the District Magistrate (Nainital) to keep the licences of the two firearms detained by custom officials alive till such time the said firearms were returned to him.”

4. The respondents filed counter affidavit in opposition to the writ petition and pointed out that firearms fall under the restricted category of Exim Policy (1997-2002) and as such import of firearms is not permitted except against an import licence issued by the DGFT to renowned shooters/Rifle Clubs for their own use on the recommendation of the Department of Youth Affairs and Sports. The respondents submitted that although import of firearms is not permitted as per the Exim Policy, yet one firearm has been allowed under instructions dated January 5, 1988 and June 7, 1995 issued by the Ministry of Finance applicable to persons transferring their residence to India.

5. The Single Judge of the High Court after hearing the parties dismissed the writ petition on August 1, 2003. The appellant preferred Letters Patent Appeal against the order of the Single Judge. Two miscellaneous applications were also made in the appeal. The Division Bench dismissed the Letters Patent Appeal and disposed of two miscellaneous applications by a common judgment dated March 20, 2008. It is from this judgment that these three appeals by special leave arise.

6. Pausing here, certain relevant statutory provisions may be set out. Section 3 of the 1959 Act provides for licence for acquisition and possession of firearms and ammunition. It reads, thus:

“S.3. Licence for acquisition and possession of firearms and ammunition-- (1) No person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder :

Provided that a person may, without himself holding a licence carry any firearms or ammunition in the presence, or under the written authority, of the holder of the licence for repair or for renewal of the licence or for use by such holder.

(2) Notwithstanding anything contained in sub- section (1), no person, other than a person referred to in sub-section (3), shall acquire, have in his possession or carry, at any time, more than three firearms:

Provided that a person who has in his possession more firearms than three at the commencement of the Arms (Amendment) Act, 1983, may retain with him any three of such firearms and shall deposit, within ninety days from such commencement, the remaining firearms with the officer in charge of the nearest police station or, subject to the conditions prescribed for the purposes of sub-section (1) of section 21, with a licensed dealer or, where such person is a member of the armed forces of the Union, in a unit armoury referred to in that sub-section.

(3) Nothing contained in sub-section (2) shall apply to any dealer in firearms or to any member of a rifle club or rifle association licensed or recognized by the Central Government using a point 22 bore rifle or an air rifle for target practice.

(4) The provisions of sub-section (2) to (6) (both inclusive) of section 21 shall apply in relation to any deposit of firearms under the proviso to sub-section (2) as they apply in relation to the deposit of any arms or ammunition under sub-section (1) of that section.”

7. The provision of licence for import and export of arms is made in Section 10 of 1959 Act. It reads:

“S.10. Licence for import and export of arms, etc.--(1) No person shall bring into, or take out of India by sea, land or air any arms or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder:

Provided that-- (a) a person who is entitled by virtue of this Act or any other law for the time being in force to have, or is not prohibited by this Act or such other law from having, in his possession any arms or ammunition, may without a licence in this behalf bring into, or take out of, India such arms or ammunition in reasonable quantities for his own private use;

(b) a person being a bona fide tourist belonging to any such country as the Central Government may, by notification in the Official Gazette, specify, who is not prohibited by the laws of that country from having in his possession any arms or ammunition, may, without a licence under this section but in accordance with such conditions as may be prescribed, bring with him into India arms and ammunition in reasonable quantities for use by him for purposes only of sport and for no other purpose.

Explanation--For purpose of clause (b) of this proviso, the word "tourist" means a person who not being a citizen of India visits India for a period not exceeding six months with no other object than recreation, sight-seeing, or participation in a representative capacity in meetings convened by the Central Government or in international conferences, associations or other bodies.

(2) Notwithstanding anything contained in the proviso to sub-section (1) where the Commissioner of Customs or any other officer empowered by the Central Government in this behalf has any doubt as to the applicability of clause (a) or clause (b) of that proviso to any person who claims that such clause is applicable to him or as to the reasonableness of the quantities of arms or ammunition in the possession of any person referred to in such clause, or as to the use to which such arms or ammunition may be put by such person, may detain the arms or ammunition in the possession of such person until he receives the orders of the Central Government in relation thereto.

(3) xxx xxx xxx”

8. Section 11 of the 1959 Act empowers the Central Government to prohibit, by notification in the Official Gazette, the bringing into, or the taking out of India, arms or ammunition of such classes and descriptions as may be specified in the notification.

9. 1962 Rules have been framed by the Central Government in exercise of the powers conferred under 1959 Act. Rule 4 read with Schedule II specifies the licensing authorities for the purposes indicated therein. Rule 51 provides for application for the grant of licence.

10. Section 79 of the Customs Act, 1962, inter-alia, empowers the Central Government to make rules for exemption from duty any article in the baggage of a passenger. For that purpose, Baggage Rules, 998 have been notified by the Central Government. Rule 7 thereof provides:

“R.7. Transfer of residence.-- (1) A person who is transferring his residence to India shall be allowed clearance free of duty, in addition to what he is allowed under rule 3 or, as the case may be, under rule 4, articles in his bonafide baggage to the extent mentioned in column (1) of Appendix F, subject to the conditions, if any, mentioned in the corresponding entry in column (1) of the said Appendix.

(2) The conditions may be relaxed to the extent mentioned in column (3) of the Appendix F.”

11. Section 3 of the Foreign Trade (Development and Regulation Act), 1992 (for short, `1992 Act') empowers the Central Government to make provisions relating to imports and exports. Under Section 5 of 1992 Act, the Central Government may formulate the export and import policy by notification in the Official Gazette. In exercise of the aforesaid powers vested in the Central Government, Exim Policy 1997-2002 was laid down by DGFT. Paras 4.5 and 4.7 of that Policy read as follows:

“4.5 Restricted Goods.- Any goods, the export or import of which is restricted under `ITC (HS) classification of Export and Import items' may be exported or imported only in accordance with a licence issued in this behalf.

4.7 Licence not a right.- No person may claim a licence as a right and the Director General of Foreign Trade or the licensing authority shall have the power to refuse to grant or renew a licence in accordance with the provisions of the Act and the Rules made thereunder.”

12. It appears that the Ministry of Finance has issued certain circulars from time to time relevant to the transfer of residence; the two relevant Circulars in this regard are Circulars dated January 5, 1988 and June 7, 1995. In the latest Circular dated June 7, 1995, the instructions issued in earlier Circular dated January 5, 1988 have been reiterated. The Circular dated June 7, 1995 reads as follows:

“F.No. 605/74/95-DBK Transfer of Residence Form Revision Circular No. 63/95-Cus.

Dated 7/6/95 Government of India Ministry of Finance Department of Revenue, New Delhi Subject : Transfer of Residence Form in vogue for claiming benefits of Transfer of Residence under Chapter IV of the Baggage Rules, 1994 - reg.

The undersigned is directed to say that it has been brought to the notice of the Board that the Transfer of Residence Form being used in your Collectorate contains a clause that "the goods cleared by the passenger shall not be sold, displayed or advertised or offered for sale until their market price has depreciated to less than 50% of the market price when new," although in terms of the existing provisions, there is no such restriction on the goods cleared as baggage by a passenger. A copy of the Transfer of Residence Form received with the reference is enclosed for your ready reference. As the Baggage (Conditions of Exemption) Rules, 1975 have already been rescinded, this clause in the Transfer of Residence Form has to be deleted to avoid confusion in the minds of passengers.

2. It is, therefore, requested that necessary action in the matter may be taken immediately under intimation to the Board.

3. In this connection, it is pointed out that one firearm of permissible bore is allowed to be imported by persons transferring their residence to India under Ministry's instructions dated 5.1.88 issued from F.No.497/57/87-Cus. VI. Such release is permitted subject to the condition that the firearm so cleared shall not be sold, transferred, loaned or otherwise parted with, for consideration or otherwise, to any other person in India during the life time of the person concerned. An endorsement to this effect is made in the arm licence and the passport of the passenger concerned at the time of clearance of the firearm. Such endorsement shall continue to be made by the customs authorities at the time of clearance of the firearm in question.

Sd/- (T.R. Kapur) Under Secretary (Cus.VI)”

13. The thrust of the argument on behalf of the appellant is that on transfer of his residence, the appellant was entitled to bring upto three firearms into India for which he holds valid licences. In this regard, heavy reliance is placed on Baggage Rules, 1998 and Sections 3 and 10 of 1959 Act. It has been submitted on behalf of the appellant that the provisions contained in 1992 Act or the Exim Policy have no application. It was urged that the Single Judge as well as the Division Bench erred in not properly appreciating the statutory provisions and denial of relief to him by the High Court is erroneous.

14. Section 3(1) of 1959 Act prohibits acquisition, possession or carriage of firearms or ammunition without a licence issued in accordance with 1959 Act and the Rules framed thereunder. Section 3(2) puts ceiling on acquisition, possession or carriage upto three firearms except the category of persons mentioned in sub-section (3). Section 10 prohibits, inter alia, import of arms or ammunition by sea, land or air without a licence issued under the 1959 Act and the 1962 Rules. Section 11 empowers the Central Government to prohibit import or export of arms or ammunition of such classes and descriptions as may be specified in the notification. It is true that prohibition contained in Section 3(1) and Section 3(2) and Section 10 is not attracted against the appellant but that would not entitle him to bring in firearms to the country on transfer of his residence, import of which is prohibited. Under Section 5 of 1992 Act, the Central Government has formulated export and import policy (Exim Policy 1997-2002). Para 4.5 thereof provides that any goods, the export and import of which is restricted under ITC(HS) classification of Export and Import items may be exported or imported only in accordance with a licence issued in this behalf. Para 4.7 of Exim Policy makes a provision that no person may claim a licence as a right and the DGFT or the licensing authority shall have the power to refuse to grant or renew a licence in accordance with the provisions of 1992 Act and the Rules made thereunder. The relevant extract of the ITC(HS) classification in Exim Policy 1997-2002 is as follows:

“EXIM Item Description Policy Conditions relating Import to the Policy under Code Public Notice 93032000 Other sporting, Restricted Not permitted to be hunting or

target- imported except shooting Shotguns, against a licence by including renowned combination shooters/Rifle shotgun-rifles Clubs for their own use on the recommendation of the Department of Youth Affairs and Sports;

Government of India 93033000 Other sporting, Restricted Not permitted to be hunting or target- imported except shooting rifles against a Licence by renowned shooters/Rifle Clubs for their own use on the recommendation of the Department of Youth Affairs and Sports;

Government of India”

15. The Division Bench of the High Court considered the provisions of the Exim Policy (1997-2002) with regard to import of firearms and recorded its conclusion thus:

“The aforesaid extract of the Exim Policy clearly shows that the import of sporting, hunting or target-shooting shotguns, including combination shotgun-rifles is not permitted except against a license by renowned Shooters/Rifle Clubs for their own use and that too on the recommendation of the Government of India.

Thus, it stands clearly established that the import of firearms, which is governed by the Exim Policy, is prohibited thereunder, except to the extent stated therein.”

We are in agreement with the view of the Division Bench.”

16. Insofar as Baggage Rules, 1998 are concerned, we find merit in the contention of Mr. Gourab Banerji, Additional Solicitor General, that the said Rules deal with import of duty free articles by a person in his bona fide baggage. The contention of the appellant that he is entitled to bring in more than one firearm because of transfer of residence by relying upon Baggage Rules is misconceived. The only inference that can be drawn from these Rules is that duty free import of firearms is not permissible. The Division Bench has rightly considered the provisions contained in Customs Act, 1962, Baggage Rules, 1959 Act and Rules framed thereunder, 1992 Act and the Exim Policy and did not commit any error in holding that a person is not entitled by virtue of 1959 Act or the Rules framed thereunder to bring into India such licensed firearms, if any provision of law prohibits or restricts the bringing of such articles. What is important to be noticed is that in the light of the Exim Policy, the import of firearms is permissible only against an import licence issued by the DGFT to renowned shooters / rifle clubs for their own use on the recommendation of the Department of Youth Affairs and Sports and the appellant has been denied import licence because he is not covered by this category. It transpires that by virtue of the Circulars dated January 5, 1988 and June 7, 1995, however, the appellant was permitted one firearm but we do not intend to consider the effect of Exim Policy on these circulars as such controversy has not been raised before us.

17. All in all, consideration of the matter by the Division Bench appears to us to be proper justifying no interference by this Court. The appeals, therefore, have no merit and are dismissed with no order as to costs.