

SUPREME COURT OF INDIA

Directorate of Revenue Intelligence

Vs.

Pushpa Lekhumal Tolani

C.A.No.4403 of 2010

(R.K.Agrawal and Prafulla C.Pant,JJ.,)

18.08.2017

JUDGMENT

R.K.Agrawal,J.,

1. The present appeal has been filed against the final judgments and orders dated 13.09.2006 and 04.09.2009 passed by the Division Bench of the High Court of Delhi in W.P. (C) No. 6633 of 2003 and Review Petition No. 335 of 2009 respectively whereby the High Court allowed the writ petition filed by the respondent herein while dismissing the review petition.

2. Brief facts:

“(a)On 19.11.2002, on the basis of specific intelligence tip off the effect that one lady named Ms. Pushpa Lekhumal Tolani-the respondent herein, who was Scheduled to arrive at IGI Airport from London, would be carrying gold and diamond jewellery and other valuable goods concealed in her bags and would pass through the Green Channel without the payment of the customs duty, the officers of the Directorate of Revenue Intelligence (DRI), Hqrs. Office, New Delhi, kept a watch on her and as soon as she was about to cross the exit gate after passing through the Green Channel, she was intercepted and was asked whether she has any dutiable item to declare to which she replied in negative. A search was conducted under Section 102 of the Customs Act, 1962 (hereinafter referred to as ‘the Act’) and 28 packages containing 44 items of jewellery worth Rs. 1.27 crores were recovered from two hand bags. On the very same day, the respondent was produced before the Additional Chief Judicial Magistrate and was remanded to judicial custody and she remained there till 26.11.2002.

(b) On 12.12.2002, a show-cause notice was issued to the respondent by the then Assistant Director, Directorate of Revenue Intelligence, asking her to show-cause as to why the seized goods should not be confiscated under the Act. On 14.08.2003, the competent authority, passed a detailed order confiscating absolutely the new articles

valued at Rs. 86,52,765/-, confiscation of seized jewellery worth Rs. 40,47,235/- with redemption clause on payment of fine of Rs. 3,00,000/- and penalty to the tune of Rs. 15,00,000/-. Vide order dated 27.09.2004, Additional Chief Metropolitan Magistrate, New Delhi, found the respondent guilty under Sections 132 and 135(1)(a) of the Act and sentenced to undergo imprisonment for the period already undergone and imposed a fine of Rs. 6 lakhs.

(c) Being aggrieved by the show-cause notice dated 12.12.2002 and order dated 14.08.2003, the respondent herein filed Writ Petition (C) No. 6633 of 2003 before the High Court of Delhi. The Division Bench of the High Court, vide order dated 13.09.2006 allowed the writ petition and quashed the show-cause notice and order dated 14.08.2003 and directed for release of the goods. In view of the aforesaid judgment, the appeal filed by the respondent herein against the conviction passed by the Additional Chief Metropolitan Magistrate was allowed by the Additional Sessions Judge vide order dated 11.04.2007.

(d) Aggrieved by the decision of the High Court, the appellant filed a review petition being No. 335 of 2009. The Division Bench of the High Court, vide order dated 04.09.2009, dismissed the said review petition.

(e) Aggrieved by the orders dated 13.09.2006 and 04.09.2009, the appellant has preferred this appeal by way of special leave.”

3. Heard the arguments advanced by Mr. Ranjit Kumar, learned Solicitor General for the appellant and Mr. Sidharth Luthra, learned senior counsel for the respondent and perused the records.

Point(s) for consideration:

4. The only point for consideration before this Court is whether in the present facts and circumstances of the case, the show-cause notice dated 12.12.2002 and order date 14.08.2003 are liable to be quashed or not?

Rival contentions:

5. Learned Solicitor General, appearing on behalf of the appellant-DRI, contended that many of the items seized like gold and diamond studded tie pins, tie clips, metal collar etc., which cannot be used by a lady, cannot be termed as personal effects under the Baggage Rules, 1998. Similarly, the articles which are newly purchased as evidenced by the invoices and are of extremely high value as well as the articles belonging to other persons besides the passenger cannot be termed as personal effects. Learned Solicitor General further contended that the High Court failed to appreciate that in the scheme of law, there is exemption from duty on goods upto a specified value in the case of passenger baggage but there is no exemption from making a true and correct declaration by a passenger. Further, the

respondent had filed a form before she left England wherein she claimed refund of VAT which clearly indicates that she had the intention of not taking the goods back to England from where she had purchased them. Learned Solicitor General further contended that the jewellery was brought to India and attempted to be passed through the Green Channel and the respondent was responsible for smuggling the same. In fact, on return of the seized jewellery, the respondent herein directly went back to London instead of Indonesia, contrary to the assertion made before the High Court in the Writ Petition, which was held to be a ground in her favour for ascertaining her 'intention' before the High Court. Learned Solicitor General finally contended that the conduct of the respondent after release of the goods had misled the court and the judgment of the High Court on the pretext of personal effects is liable to be set aside.

6. Per contra, learned senior counsel for the respondent submitted that as per Rule 7 of the Baggage Rules 1998, a tourist arriving in India shall be allowed clearance free of duty, articles in his bona fide baggage to the extent mentioned in Column (2) Appendix-E which indicates "used personal effects" for personal use of the tourist in India which, if not consumed, could be re-exported when the tourist leaves India for a foreign destination. Hence, the charge that the respondent did not make any declaration under Section 77 of the Act is not correct as the respondent was not carrying any dutiable/prohibited items and the jewellery she was carrying was bona fide jewellery. Further, with regard to the contention of VAT refund, learned senior counsel submitted that the same has been refuted by the customs authorities in the United Kingdom stating that claimant of VAT is neither prohibited nor debarred from taking the jewellery, on which VAT has been reclaimed, back to United Kingdom, if she so chooses and in view of the same her return to London cannot be doubted. Learned senior counsel finally contended that the High Court was right in arriving at the conclusion that the goods were personal effects and for the personal use of the respondent and no interference is sought for by this Court.

Discussion :-

7. On 19.11.2002, the officers of the Directorate of Revenue Intelligence intercepted the respondent herein, who was passing through the Green Channel, on a tip off that the respondent herein is scheduled to arrive at IGI Airport from London and carrying gold and diamond jewellery along with other valuable items and she would not declare the same to Customs and pass through Green Channel without payment of customs duty. On being asked, the lady replied that she had nothing to declare. On examination of the handbags being carried by the respondent herein several gold and diamond jewellery items were found worth Rs. 1.27 crores. On being asked by the DRI officials, it was informed that the items are personal effects and no duty is leviable on the same. However, the DRI officials seized the items under the provisions of the Act with reasonable belief that the said items were smuggled into India in contravention of provisions of the Act and hence are liable to be confiscated. After following the due procedure, a show-cause notice dated 12.12.2002 was issued to the respondent herein. The respondent herein filed her reply to the show-cause notice denying each and every allegation leveled against her. On 14.08.2003, an order was

passed by the Additional Commissioner of Customs, IGI Airport, New Delhi directing confiscation of the jewellery on certain terms and conditions contained in the order. The respondent herein preferred a writ petition being No. 6633 of 2003 challenging the show-cause notice dated 12.12.2002 and the order of the Additional Commissioner dated 14.08.2003 before the High Court. The Division Bench of the High Court, vide order dated 13.09.2006 allowed the writ petition and vide order dated 04.09.2009 dismissed the review petition filed by the appellant against the order dated 13.09.2006.

8. In the above backdrop, it is relevant to quote certain provisions of the Baggage Rules, 1998 as well as the Circulars dated 24.09.1998 and 18.02.2000 issued by the Ministry of Finance which are as under:- Definitions.-

“2. (iii) “tourist” means a person not normally resident in India, who enters India for a stay of not more than six months in the course of any twelve months period for legitimate non-immigrant purposes, such as touring, recreation, sports, health, family reasons, study, religious pilgrimage or business;

7. Tourists.-A tourist arriving in India shall be allowed clearance free of duty articles in his bona fide baggage to the extent mentioned in column (2) of Appendix E.

Appendix E

1		2 Articles allowed free of duty	
A	Xxxx		Xxxx
B	Tourists of foreign origin other than those of Nepalese origin coming from Nepal or of Bhutanese origin coming from Bhutan or Pakistani origin coming from Pakistan	i	Used personal effects and travel souvenirs, if
		a	These goods, are for personal use of the tourist and
		b	These goods, other than those consumed during the stay in India, are re-exported when the tourist leaves India for a foreign destination.
		ii	Articles upto a value of Rs. 8,000/- for making gifts
c	xxx		xxxxx
d	xxx		xxxxx

Government of India
Ministry of Finance
Department of Revenue, New Delhi

1. xxxxx

2. xxxxx

3. The Baggage Rules, 1998 issued vide Notn. No. 30/98-Cus(NT) dated 2/6/98 has provided for import of duty free goods by tourists in Regulation 7 as contained in Appendix E of the said rules. There is no definition for personal effects in the present Baggage Rules. However, for the sake of uniformity it is considered necessary to reiterate that the personal effects would include the following goods:-

(i) Personal jewellery

(ii) One camera with filmrolls not exceeding twenty

(iii) One video camera/camcorder with accessories and with video cassettes not exceeding twelve

(iv) One pair of binoculars

(v) One portable colour television (not exceeding 15 cms in size)

(vi) One music system including compact disc player

(vii) One portable typewriter

(viii) One permabulator

(ix) One tent and other camping equipment

(x) One computer (laptop/note book)

(xi) One electronic diary

(xii) One portable wireless receiving set (transistor radio)

(xiii) Professional equipments, instruments and Apparatus of appliances including professional audio/video equipments.

(xiv) Sports equipments such as one fishing outfit, one sporting fire arm with fifty cartridges, one non-powdered bicycles, one canoe or ranges less than 51 metres long, one pair of skids, two tennis rackets, one golf set (14 pcs. With a dozen of gold balls.)

(xv) One cell phone

4. It may kindly be noted that while Notn. No. 45/92 defined personal effects as articles both new or used and Rule 11 of Baggage Rules 1994 allowed personal effects of tourists for duty free import, the Baggage Rules 1998 allows only used personal effects of the tourists. It is not the intention of the Board to verify the newness of every product which a traveler brings so long as it is not prima facie new goods in their original packagings which can be disposed of off hand. (emphasis supplied by us)

Sd/-
(Vijay Kumar)
Under Secretary to the Govt. of India

F.No. 495/29/99-Cus-VI
Government of India
Ministry of Finance
Department of Revenue, New Delhi
Central Board of Excise & Customs
New Delhi, the 18th Feb, 2000

Subject: Baggage Rules–Tourist baggage–no endorsement of imports of personal effects on tourists’ passports

1. xxxxx

2. xxxxx

3. It may kindly be ensured that all genuine tourists are allowed to bring in their personal effects without endorsement on the passports and without payment of duty, subject to the terms and conditions prescribed in the Baggage rules, 1998.”

(emphasis supplied by us)

9. Insofar as the question of violation of the provisions of the Act is concerned, we are of the opinion that the respondent herein did not violate the provisions of Section 77 of the Act since the necessary declaration was made by the respondent while passing through the Green Channel. Such declarations are deemed to be implicit and devised with a view to facilitate expeditious and smooth clearance of the passenger. Further, as per the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto

18.05.1973), a passenger going through the green channel is itself a declaration that he has no dutiable or prohibited articles. Further, a harmonious reading of Rule 7 of the Baggage Rules, 1998 read with Appendix E (2) (quoted above), the respondent was not carrying any dutiable goods because the goods were the bona fide jewellery of the respondent for her personal use and was intended to be taken out of India. Also, with regard to the proximity of purchase of jewellery, all the jewellery was not purchased a few days before the departure of the respondent from UK, a large number of items had been in use for a long period. It did not make any difference whether the jewellery is new or used. There is also no relevance of the argument that since all the jewellery is to be taken out of India, it was, therefore, deliberately brought to India for taking it to Singapore. Foreign tourists are allowed to bring into India jewellery even of substantial value provided it is meant to be taken out of India with them and it is a pre-requisite at the time of making endorsements on the passport. Therefore, bringing jewellery into India for taking it out with the passenger is permissible and is not liable to any import duty. Learned senior counsel brought to our notice that even as per EXIM Code Numbers 7113 19 20 and 7113 19 30 of ITC (HS) Classification of Export and Import items as on 01.04.2002, the import of gold jewellery studded with diamonds or with other precious stones, is freely allowed. Similarly, learned senior counsel rightly submitted that the invocation of Section 80 of the Act is of no use as this Section applies only to dutiable and prohibited goods. The accusation of not declaring the goods to the customs authority and evading duty alleged to be due thereupon has no legal basis.

10. With regard to the intention of the respondent to take back the jewellery to England is concerned, we do not think that the air ticket sought to be relied upon by the DRI is of much consequence. In the reply affidavit dated 20.10.2014 filed before this Court by the respondent herein, it has been submitted that the so called enquiry conducted by the appellant-DRI subsequent to the passing of the judgment by the High Court was admittedly done after the expiry of more than 1,185 days. The respondent herein left for London on 01.03.2007 on Jet Airways flight No. 9W-0122 and returned to Delhi on 06.03.2007 on Jet Airways flight No. 9W-0121. It has been further mentioned in the reply affidavit that the fact of return of the respondent herein to India has been deliberately concealed by the appellant-DRI. In fact, the respondent had travelled to London to attend a doctor's appointment with her daughter who was unwell at the relevant time. Further, there is no restriction in UK law which prohibits a person claiming VAT in London from re-importing the items on which VAT has been claimed at a later date. Also, from the present facts and circumstances of the case, it cannot be inferred that the jewellery was meant for import into India on the basis of return ticket which was found to be in the possession of the respondent. Moreover, we cannot ignore the contention of the respondent that her parents at the relevant time were in Indonesia and she had plans of proceeding to Indonesia. Some of the jewellery items purchased by the respondent were for her personal use and some were intended to be left with her parents in Indonesia. The High Court has rightly held that when she brought jewellery of a huge amount into the country, the respondent did not seem to have the intention to smuggle the jewellery into India and to sell it off. Even on the examination of the jewellery for costing purposes, it has come out to be of Rs. 25 lakhs and not Rs. 1.27 crores as per the DRI. The High Court was right in holding that it is not the intention of the Board to verify the newness

of every product which a traveler brings with him as his personal effect. It is quite reasonable that a traveler may make purchases of his personal effects before embarking on a tour to India. It could be of any personal effect including jewellery. Therefore, its newness is of no consequence. The expression “new goods” in their original packing has to be understood in a pragmatic way.

Conclusion:-

11. We are of the considered opinion that in the absence of any facts on record about the nature and mode of concealment and also any finding of the lower authority that jewellery was kept in a way to evade detection on examination of the baggage, it has to be held that there was no concealment as such. It is seen that the respondent chose the Green Channel for clearance of her baggage. She committed no violation of law or infraction of any instruction for clearance of the baggage through the green channel as she being a tourist had no dutiable goods to declare under the Baggage Rules. The presumption that the jewellery found in her baggage cannot be considered as personal effects owing to its high monetary value is rebutted herewith and we hold that the respondent was entitled to import personal jewellery duty free.

12. In the facts and circumstances of this case, it will be just and proper to expunge the remarks against the appellant from the judgment passed by the High Court. Therefore, the strictures passed against the appellant are expunged.

13. In view of the foregoing discussion, we are of the considered opinion that the High Court was right in setting aside the show-cause notice dated 12.12.2002 and order dated 14.08.2003 passed by the competent authority. There is no scope to interfere in the orders passed by the Division Bench of the High Court. There is no merit in this appeal and the appeal is, therefore, dismissed with no order as to costs. However, it is made clear that the present conclusion is confined only to the disposal of this appeal.