

THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE N.TUKARAMJI
WRIT PETITION No.19176 of 2005

ORDER : *(per Hon'ble Sri Justice P.SAM KOSHY)*

The instant writ petition has been filed assailing the order passed by the respondent No.1/Joint Secretary to the Government of India dated 27.01.2005 whereby the revision application filed by the respondent No.2/Commissioner of Customs & Central Excise stood allowed by setting aside the Order-in-Appeal dated 19.02.2004 passed by the respondent No.3/Commissioner of Customs & Central Excise (Appeals).

2. Heard Mr. G. Mohan Rao, learned Senior Counsel for the petitioner, Mr. B. Mukherjee, learned counsel representing Mr. Gadi Praveen Kumar, learned Deputy Solicitor General of India for the respondent No.1 and Mr. Dominic Fernandes, learned Senior Standing Counsel for CBIC appearing for the respondent No.2.

3. For proper understanding of the dispute, it would be relevant at this juncture to briefly note the facts which led to filing of the instant writ petition which are as under:

3.1 The petitioner undertook a journey from Singapore to Hyderabad by flight No.MI 478 on 27.12.2002. In the baggage

which the petitioner had brought, there were 99 Nos. of SD RAM 256, MB-PC 133, 200 Nos. of SD RAM 128 MB-PC 133 and 80 Nos. of Printer Memory Cards. The petitioner while bringing these goods had made the declaration to the Customs authorities declaring the value of goods at Rs.30,000/- on the Immigration Slip.

3.2 The Customs authorities upon subsequent verification of the value of the goods found that the actual price of the goods was more than Rs.4,49,000/- as compared to declaration of Rs.30,000/- made by the petitioner. Accordingly, proceedings were initiated against the petitioner under the Customs Act, 1962 (herein referred to as 'the Act') alleging contravention of Section 77 of the Act and the petitioner was called upon for a personal hearing, during which time the petitioner sought permission for re-export of the goods. Meanwhile, respondent No.3 vide order dated 03.02.2003 ordered for confiscation of the said goods under Section 111(d) and Section (1)(m) of the Act. The petitioner was subsequently given with the option of redeeming the same on payment of Rs.80,000/- for re-export or for home consumption. In addition, a penalty of Rs.10,000/- was also imposed. The offer of redemption was accepted by the petitioner who in turn paid the requisite fine and penalty and re-exported the goods.

3.3 The aforesaid order of the respondent No.3 which was subjected to challenge by the petitioner before respondent No.2 stood allowed. The respondent No.2 after considering the contentions put forth by the petitioner held that requirement under Section 77 of the Act was only the declaration of the products being brought under the baggage and the actual value was not what was mandatorily required under the said Act. According to respondent No.2, it was the contents of the baggage which was required to be declared to the proper officer. While allowing the said appeal, the Order-in-Original passed by the respondent No.3 was set aside. As a consequence, the petitioner moved to the Customs authorities for refund of the fine and penalty paid by him while redeeming the goods. The order of the respondent No.2 is dated 19.02.2004 in Appeal No.15/2004(H-II)Cus.

3.4 The respondent No.2 thereafter filed a revision petition under Section 129DD of the Act which was registered as F.No.380/30/B/04-RA before respondent No.1. After hearing the parties in dispute, the respondent No.1 allowed the revision petition setting aside the order passed by the respondent No.3, thereby confirming the Order-in-Original passed by the respondent No.2.

3.5 The respondent No.1 found that the quantity of goods found in the baggage was of commercial quantity which otherwise would not be permissible within the scope of the baggage rules even on payment of duty. It was also the finding of the respondent No.1 that even otherwise the petitioner was required to pay the redemption fine and penalty in terms of the instructions of the Board dated 11.04.2000 as also the circular dated 22.02.2001. It is this order which is under challenge in the instant writ petition.

4. Learned Senior Counsel for the petitioner has been harping on the fact that once when there was an order issued by respondent No.3 permitting him to re-export the goods, the decision of respondent No.1 at the first instance ordering for payment of redemption fine and penalty is bad in law. It was the contention of the learned Senior Counsel for the petitioner that the allegation against the petitioner in so far as the offence under Section 111(m) of the Act is totally unwarranted as Section 111(m) would not be applicable in respect of goods brought by way of baggage. That all the goods that the petitioner had brought were in fact for domestic use and were not for commercial purpose and the authorities concerned have wrongly accepted it to be that of commercial quantity. Therefore, the impugned order is liable to be

set aside and the order passed by respondent No.3 needs to be affirmed.

5. According to the learned Senior Counsel for the petitioner so far as the requirement under Section 77 is concerned, it is a declaration so far as the contents of the baggage is concerned which the petitioner has correctly declared and there was no disparity in that. Therefore, the very initiation of proceedings by the respondent authorities is *per se* bad in law. It was further contended that there has not concealment of any of the facts by the petitioner and therefore the confiscation proceedings as also the order for payment of redemption fine and penalty both deserve to be interdicted by this Court. Thus, the proceedings under Section 111(d) of the Act is also bad in law and liable to be set aside.

6. On the contrary, learned Senior Standing Counsel for CBIC opposing the writ petition submits that the petitioner at the first instance itself has concealed the actual value of the goods when he declared the value at Rs.30,000/- in the Immigration Slip but when the Customs authorities got the goods valued, they found that the value of the goods is more than Rs.4,49,000/-. Whereas, the valuation declared by the petitioner was only Rs.30,000/-.

7. Learned Senior Standing Counsel for CBIC further contended that even thereafter when the petitioner produced the invoice from the purchaser, the price reflected in the said was different than what was declared by the petitioner that of Rs.30,000/- as the invoice price was reflecting Rs.1,00,000/- which is again much less than the valuation done by the Customs authorities. That the petitioner has failed to make true declaration particularly so far as the value of the goods is concerned, the same being used for commercial purpose and the products being shown as products for cameras. Whereas, all the products brought were computer related memory cards. Thus, the petitioner in fact did not make true declaration which he was otherwise required to do.

8. Lastly, it was contended by the learned Senior Standing Counsel for CBIC that plain reading of Section 111(m) of the Act would clearly attract the case of the petitioner and therefore the order passed by respondent No.1 in this case does not warrant any interference and the same deserves to be rejected.

9. In view of the submissions made by the learned counsel appearing on either side and on perusal of records, the admitted factual matrix as it stands, the petitioner travelled from Singapore to Hyderabad on 27.12.2002. Along with his baggage, he carried 99 Nos. of SD RAM 256, MB-PC 133, 200 Nos. of SD RAM 128 MB-PC

133 and 80 Nos. of Printer Memory Cards. The true value of the goods brought in the baggage by the petitioner on verification was assessed around more than Rs.4,49,000/- and the quantity of the goods brought in by the petitioner can never be considered to be goods brought in for domestic use, but was being brought only for commercial purpose. The petitioner did not have proper invoice when he brought those goods in his baggage. The invoice was subsequently obtained and which declared the value of goods altogether different than what has been declared by the petitioner. The invoice produced by the petitioner reflected the value of goods at Rs.1,00,000/-.

10. In the given admitted factual matrix of the case, it would be more relevant to take note of provisions of Section 111(m) of the Act which deals with the confiscation and improperly imported goods. As per Section 111(m) *“goods brought from a place outside India shall be liable to confiscation if those goods did not correspond value or any other particular with entry made under this Act or in the case of baggage when the declaration made under Section 77 in respect thereof or in the case of goods under transshipment with the declaration for transshipment referred to in the proviso to sub-section (1) of Section 54”*.

11. It is also necessary to appreciate the fact that Section 79 describes as to what would otherwise be a bona fide baggage exempted from duty. Clauses (a) and (b) of Section 79 emphatically holds that only those articles can be said to be a bona fide baggage where the articles in the baggage has been brought for personal use alone even if it is for specific period or otherwise it has to be a product for personal use/consumption alone.

12. The petitioner in his baggage, coupled with mis-match in the value of the goods declared and the value of the goods assessed. At the same time, if we read the provisions of Section 111(m) which is referred to in the earlier paragraphs, admittedly there is a mis-match on the true declaration made by the petitioner so far as its value is concerned and secondly so far as its use not being domestic but for commercial purpose. Under the said circumstances, if confiscation proceedings have been initiated, the same cannot be said to be unsustainable or contrary to law. Upon confiscation proceedings drawn, the person would be entitled to move an application seeking permission to re-export the said goods. That on the application for re-export of the goods made, the same was allowed and the petitioner was permitted to re-export the goods which again is strictly in accordance with the law. At the same time, since there were confiscation proceedings drawn, in

order to have the goods back or culmination of the confiscation proceedings, he was entitled to redeem the same after paying fine and penalty which in the instant case the petitioner had availed by paying redemption fine and penalty. Having accepted all at the first instance itself in terms of the offer that was extended by the respondent authorities, the petitioner should not have a grievance.

13. In the aforesaid entirety of the matter and the given factual circumstances of the case, we are of the considered opinion that the finding given by the revision authority i.e. respondent No.1 taking into consideration the provisions of law, particularly Section 111(m) of the Act and also taking into consideration the various instruction issued by the CBEC, we do not find any error of fact or on law to have committed by respondent No.1.

14. The instant writ petition sans merit and is accordingly rejected. However, there shall be no order as to costs. Consequently, miscellaneous petitions pending if any, shall stand closed.

P.SAM KOSHY, J

N.TUKARAMJI, J

Date: 12.02.2024
GSD