(2015) 2 AD 147 : (2015) 216 DLT 562 : (2015) 317 ELT 221

Delhi High Court

Case No: WP(C) No. 3634/2014

Abhinav Kumar		APPELLANT
	Vs	
Ministry of Finance		RESPONDENT

Date of Decision: Dec. 22, 2014

Acts Referred:
Constitution of India, 1950 â€" Article 226#Customs Act, 1962 â€" Section 25, 79

Citation: (2015) 2 AD 147 : (2015) 216 DLT 562 : (2015) 317 ELT 221

Hon'ble Judges: G. Rohini, C.J; Rajiv Sahai Endlaw, J

Bench: Division Bench

Advocate: Awanish Kumar, Advocate for the Appellant; Sanjay Jain, ASG, Sonia Sharma and Pallavi Shali, Advocate for the Respondent

Judgement

Rajiv Sahai Endlaw, J.
This petition under Article 226 of the Constitution of India, filed as a Public Interest Litigation (PIL) , flags the issue

of non availability of an ""Appraisal Counter for issuance of Export Certificate"" at the Indira Gandhi International (IGI) Airport, New Delhi, forcing

the passengers to travel to the Custom House, Jhandewalan which is about 30 kms. away from the airport and thereby causing undue hardship to

the commuters. The petition accordingly seeks a mandamus to the respondents Ministry of Finance, Department of Revenue and the Central

Board of Customs and Excise to have such an Appraisal Counter for evaluation of declared items of the passengers at the IGI Airport, New Delhi.

2. It is the case of the petitioner that:

(i) As per the Baggage Rules, 1998 framed in exercise of powers under Section 79 of the Customs Act, 1962, Indian males and females who have

been residing abroad for over one year can while returning carry duty free jewellery upto the value of Rs. 50,000/- and Rs. 1,00,000/-

respectively.

(ii) Indians travelling abroad also often carry expensive items intended to be brought back "" to facilitate return of such goods without attracting any

duty, concept of Export Certificate was introduced as a facilitation measure by the Customs Department.

(iii) The Government in exercise of powers under Section 25 of the Customs Act has also notified the list of goods exempted from duty, it also

notified the rate of import duty of various items including on gold; however such duty is not leviable if the said item carried by the passenger while

travelling from India and accompanied with an Export Certificate (supra) or is within the limit prescribed by the Baggage Rules.

(iv) However no Appraisal Counter which can give Export Certificate is available at IGI Airport and for getting the assessment; the passenger is

directed to Customs House at Jhandewalan, which is at 30 kms. distance -- the same causes inconvenience to the passengers.

(v) Other countries, viz. United States of America and United Kingdom, have Evaluation / Appraiser''s Kiosk at the airport itself.

3. The petition was entertained and notice thereof issued. A counter affidavit has been filed on behalf of Additional Commissioner of Customs, IGI

Airport, pleading that:-

(a) the process of issuing of Export Certificate for gold jewellery is time consuming, wherein the metal is tested for its purity rank and photographs

are taken and the jewellery sealed;

(b) owing to the high number of passengers who may like to get an Export Certificates and the time consumed in issuing such certificate, it is highly

improbable to issue such certificates on the spot to ongoing passengers;

(c) such Export Certificate can be issued only in advance, requiring the passenger to use such facility at least one working day in advance;

(d) the facility has been made available in Jhandewalan complex located in the center of the city;

(e) relocating such services to airport will require the passengers to make two trips to airport, furthering the problems faced by them -- such trips

with jewellery may also cause security hazards for the passengers;

(f) IGI Airport Customs is short of desirable space and infrastructure and trained jewellery appraisers to provide such facilities at IGI airport;

(g) to the best of the knowledge of the deponent, no airport in the country has such facility;

(h) issuance of the Export Certificate for jewellery can only be done in advance since it requires time and involves jewellery experts and such a

facility is ideally located in the center of the city.

4. The learned ASG appearing for the respondents in addition contended that creation of an Appraisal Counter at the airport would also lead to

experts and staff required at the said counter being also permitted to enter the airport premises and which is likely to cause a security hazard. He

has again contended that the process of appraisal takes time and it is not feasible and convenient for the passengers also to have the appraisal,

upon reaching the airport for boarding their flight.

5. We are of the view that our judicial powers do not extend to giving a direction as is sought, the same being largely an administrative / policy

decision but at the same time, we cannot help but observe that the respondents do not appear to have approached the issue in the correct

perspective. The counter affidavit is full of legalese, rather than addressing the important issue of public interest raised in the petition. The reason

given, of paucity of space and infrastructure at the airport also does not inspire confidence. IGI Airport has recently undergone re-development by

acquisition of land, displacing a large number of villagers. To our knowledge, large portions of such acquired lands have been used for building hotels and which are often found to be serving the need, instead of users of the airports / travelers, of the city residents. We wonder as to why the

respondents, at the time when the re-development of the airport was being planned, if facing any paucity of space / infrastructure, could not have

demanded additional space.

6. Similarly, the argument given of having an Appraisal Counter at the airport / close to the airport posing a security hazard to the airport, cannot

be accepted. Having used the said airport, it is to our knowledge that large portions of the re-developed airport are outside the secured arena. It is

thus possible to have the said counter, in close vicinity of the airport and without posing any security hazard.

7. As aforesaid, the hotels in the aerocity can be accessed by all and not merely by only those using the airport. The Appraisal Counter could have

been similarly used within the said aerocity.

8. The respondents seem to have lost sight of the fact that IGI Airport is used not only by residents of Delhi but also by the residents of /

passengers headed to, the surrounding cities of Uttar Pradesh, Punjab, Haryana and / or portions thereof closer to Delhi which do not have

international airport. Passengers travelling to and fro such neighbouring states often depart from their respective homes several hours in advance to

reach the airport in time for the flight. The reasons given by the respondents in their counter affidavit would require the said persons to, besides for

boarding their flight, also visit Delhi on another day also in advance for obtaining the Export Certificate. On the contrary, if the Appraisal Counters

are at the airport or in the close vicinity of the airport, such persons can advance their departure from their homes by an hour or so, to in the same

visit, obtain the Export Certificate as well as board the flight.

9. Experience also shows that most of the international flights depart from Delhi in the night hours. It has not come on record whether the existing

Appraisal Counter remains open 24x7 or not. In our opinion it should again, so as not to compel the travelers to make a separate visit to Delhi for availing the services thereof.

10. As far as the contention, of Appraisal Counter Jhandewalan being in the center of the city, is concerned, the same also sounds doubtful.

Though Jhandewalan, New Delhi could earlier have qualified as city''s center but with the expansion of the city to the National Capital Region, it

cannot today be called so. Suffice it is to state that having the Appraisal Counter at the airport / in the close vicinity of the airport in our opinion is

not likely to cause any inconvenience even to those who may be wanting to obtain the Export Certificate a day or two in advance. Even otherwise,

having two Appraisal Counters, one at/near the airport and the other, in the city, can be considered. We find that for facilitating diamond exports,

the Government had, in addition to the existing customs clearance facility at the airport, set up another such facility near the diamond business

centre in the city of Bombay, so that the delay on account of congestion is avoided, as noted in Director of Income Tax (Exemptions) Vs. Bharat

Diamond Bourse, .

11. We are also unable to comprehend the reasoning given in the counter affidavit of the appraisal requiring a long time. We can with reasonable

certainty be sure that such appraisal does not require any chemical test. The same would at best require a physical examination with gadgets (and

which our research shows, is called the specific gravity test) and weighing the item. The same cannot certainly require hours. It is unfortunate that

the governmental agencies having dealings with the public are not awakening to the present day need, requirements and realities and seem to be

satisfied in following the systems and the procedures in vogue for decades.

12. Learned ASG has also argued that travel plans are known long in advance and it is not as if the need for appraisal arises at the last minute. The

said argument also fails to take note of increase manifold in international travel by Indians and more so for business / work purposes and which

travel plans generally are firmed up at the last minute. The reasoning given by the respondents also loses sight of the situations most often faced where a person used to wearing a jewellery item reaches the airport without realizing the need for having it appraised in advance. Such persons are

often found to be left with no alternative but to travel without the jewellery item which over the years may have become part of their personality.

13. Though no arguments have been addressed in this regard but it appears that appraisal may also be required by inbound passengers for the

purpose of valuation of the items bought by them. They also should have an option of having the appraisal done there and then rather than being

asked to surrender their valuables and visit the Appraisal Counter the next day to collect the same.

14. The respondents, in the counter affidavit though have said that no airport in the country has such an appraisal facility at the airport itself but the

same in our opinion is again no reason. What the respondents have failed to address is the specific plea of the petitioner, of the other developed

countries having Appraisal Counters at the airport only. Airports in all countries are situated generally far from the city and if such countries have

felt the need for the Appraisal Counter at the airport, we can be reasonably sure that the same must have been done for the convenience of the

passengers. Internationalization of the airports in the country has to be not only for looks but also in terms of convenience and amenities, facilities

and following the practices in vogue at the airports of other countries. We find that the key strategic objectives of the government, as noted in the

Request for Proposal document floated for privatization of Mumbai and Delhi Airport, as noted by the Supreme Court in Reliance Airport

Developers Pvt. Ltd. Vs. Airports Authority of India and Others, , inter alia were world class development on both, airside and landside.

15. We therefore dispose of this petition with a direction to the respondents to within six months herefrom take a reasoned decision on shifting the

existing Appraisal Counter to the airport / in the close vicinity of the airport, or having an additional counter at the airport/in the close vicinity of the airport, taking into consideration all possible aspects and may be even after holding surveys and including what we have observed hereinabove. A

copy of the said decision be forwarded to the petitioner.

No costs.

16. The petition is disposed of in terms of the above.