

(1999) 09 PAT CK 0112

Patna High Court

Case No: Criminal W.J.C. No. 485 of 1999

Bikaner-Assam Road
Lines India Ltd.

APPELLANT

Vs

Union of India(UOI)

RESPONDENT

Date of Decision: Sept. 28, 1999

Acts Referred:

- Constitution of India, 1950 - Article 226
- Customs Act, 1962 - Section 108, 11, 110, 111, 112
- Imports and Exports (Control) Act, 1947 - Section 3(1)
- Sea Customs Act, 1878 - Section 178A

Citation: (1999) 47 BLJR 2397 : (2000) 119 ELT 282 : (2000) 1 PLJR 135

Hon'ble Judges: Nagendra Rai, J

Bench: Single Bench

Advocate: B. Datta and Mihir Kumar Jha, for the Appellant; J.P. Karn Advocate and Rakesh Kumar, Additional Central Govt. Standing Counsel, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Nagendra Rai, J.

Three petitioners have filed the present application for quashing the seizure memo, dated 12-7-1999 (Annexure-7), issued by the Superintendent (Technical), Customs (P) Division Motihari, under the authority of the Assistant Commissioner of Customs (P) Division, Motihari, by which 220 bags of betel-nut (17,886 kgs.) and one Tata truck bearing registration No. AS-01G-3945, were seized for violation of Government of India, Ministry of Finance, Notification No. 9/91, dated 22-1-1991, issued u/s 11 of the Customs Act, 1962, read with Section 3(1) of the Import & Export (Control) Act, 1947; for declaring the seizure of the aforesaid betel-nut and the vehicle as illegal and, thereafter, to release the aforesaid articles and the vehicle during the pendency of the writ application.

2. The petitioner's case is that petitioner No. 1 is a Company incorporated under the Companies Act and engaged in transportation business having its Head Office at Bikaner in the State of Rajasthan and its Branch Offices are situated throughout the country, including the States of Assam and Bihar. Petitioner Nos. 2 and 3 are engaged in the business of Central Merchant and Commission Agent in the State of Assam. They claim to have whole-sale licences under the Assam General Sales Tax Act and the Rules framed thereunder for dealing in betel-nut (Supari) and other items. Out of the seized 220 bags of betel-nut, 120 bags of betel-nut is claimed by petitioner No. 2, whereas, 100 bags is claimed by petitioner No. 3. It is asserted on their behalf that they have procured betel-nut from the local markets in the State of Assam through various Market Committees. Petitioner No. 2 sold the aforesaid quantity of betel-nut to M/s. Vikash Trading Company, Piterkunda, Varanasi and petitioner No. 3 sold the aforesaid quantity of betel-nut to M/s. Pansum Traders, Varanasi. It is also stated that the purchasers are also registered dealers in Supari and they have valid documents, including registration certificate obtained from the authorities of the State where they are carrying business.

3. It is stated that petitioner Nos. 2 and 3 sent their consignments through the Transport Company-petitioner No. 1 and in support of the said fact, documents have been appended with the writ application. It is further stated on behalf of the petitioners that the aforesaid consignment was loaded on the truck in question and there were two drivers, one of them was Nissar Ahmad. The said truck passed through the State of West Bengal and the Commercial Tax Officer issued a certificate that the vehicle was carrying consignment of 220 bags of betel-nut and when the aforesaid vehicle reached on 12-7-1999 at 12 noon near Dumari Ghat Pul in the district of Gopalganj, the Customs authorities apprehended the truck, examined the betel-nut, took away all the relevant documents carried by the driver and directed the driver to take the truck with the consignment to Motihari and there at about 5 p.m., the Customs authorities asked the driver to park the truck inside the Customs Office and the driver after parking the truck was forcibly asked to leave the Customs Office.

4. Thereafter, on 13-7-1999, the representative of petitioner No. 1 asked a copy of the seizure memo, which was supplied and a copy of which has been appended as Annexure-7.

5. It is asserted on behalf of the petitioners that the seizure is wholly illegal. It is further stated that thereafter they filed an application before the Customs authorities to release the vehicle and the betel-nut on the ground that the betel-nut is not of a third country origin and the same is produced in the State of Assam and as such there was no violation of the provisions of the Customs Act, but no order was passed by the Customs authorities. Hence, the present writ application.

6. The stand of the Customs Department, as appears from the counter-affidavit, is that an information was received by the Inspector, Customs (P) Circle Gopalganj, regarding transportation of third country betel-nut on 12-7-1999. Thereafter, a preventive party was

formed under the leadership of the Superintendent, Customs (P), Circle Gopalganj, and he proceeded to National Highway and watched the arrival of the specific truck, about which an information was received earlier. On 12-7-1999 at 2 p.m., the truck bearing registration No. AS 01G-3945 was found parked near R. K. Motel, Khajuria facing Gopalganj, but no body was found in the truck and in spite of several announcement, no body turned up to claim its ownership. Thereafter, in presence of two witnesses, the truck was searched, on which betel-nut was found to be loaded. Thereafter, the Assistant Commissioner, Customs, Motihari, was contacted on telephone and as per his suitable direction, the truck was brought to the office of the Assistant Commissioner, Customs, Motihari, along with two witnesses with the help of a hired driver. In presence of the two witnesses under the supervision of the Assistant Commissioner, Customs, Motihari and the Superintendent, Customs (P) Circle, Gopalganj, the truck was searched thoroughly at the Customs Office, Motihari and 220 bags of betel-nut were found. Small quantities of betel-nut were chosen at random from different bags in presence of the witnesses. The authorities obtained market opinions from two different experienced dealers of the betel-nut known for their expertise for the confirmation of the foreign origin goods and they confirmed that the betel-nuts were of foreign (country) origin. Then, after completing all the formalities, the seizure of 220 bags of betel-nut was effected u/s 110 of the Customs Act, 1962 (for short "the Act") for violation of Section 11 of the Act and a panchnama was prepared in presence of the two independent witnesses and, thereafter, an information was also given to the Director-General of Revenue, Intelligence, Commissioner, Customs, Patna and the Assistant Commissioner, Motihari, vide Annexure-1. It is further stated that a summons was also issued u/s 108 of the Act to one Nisar Ahmad, who, according to the materials collected during investigation, was the driver of the truck on 3-8-1999, but he did not appear. Again summons has been issued for his appearance. It is further stated that the case is at the initial stage of investigation and this Court, in exercise of the writ jurisdiction, should not interfere in the matter. After holding inquiry for the purpose of collecting materials, steps will be taken for confiscation in terms of the provisions of the Act.

7. Learned Counsel appearing for the petitioners submitted that there was no material or ground to form a reasonable belief that the goods were liable for confiscation under the provisions of the Act. He also submitted that the petitioners have not violated any notification issued under the Act and as such the seizure of the articles is illegal. Betel-nut is produced in abundance in the State of Assam, that is inside the country and as such it is not of a third country origin and on this ground also, the seizure is impermissible in law.

8. Learned Counsel appearing for the respondents Customs authorities, on the other hand, contended that the Customs authorities having credible information had a reason to believe that the goods were liable for confiscation and, thereafter, seized the goods. Sufficiency of the material for forming a reasonable belief cannot be a subject-matter of investigation in a writ jurisdiction for the simple reason that this Court does not sit in writ jurisdiction as an appellate authority over the decision of the Customs authorities. It was

further submitted that the matter is at the initial stage of investigation and notice has been issued u/s 108 of the Act and after inquiry, the decision will be taken for confiscation and as such it will not be proper for this Court to pre-empt the decision which the authorities have to arrive at after going through the materials on the record. It was also submitted that several notifications have been issued by the Government of India, from time to time, including Notification No. 9/96, dated 22-1-1996, whereby the import from Nepal to India of goods which have been exported to Nepal from the countries, other than India, has been prohibited. The credible information, prima facie shows that the betel-nut was of a third country origin and a final decision has to be taken in terms of the provisions of the Act.

9. The Act has been enacted to check the menace of the smuggling of goods. According to Section 110 of the Act, the proper officer has been empowered to seize the goods if he has reasonable belief that the goods are liable to confiscation under the provisions of the Act. Under the provisions of the Act, the Customs authority is empowered to collect information with regard to contravention of the provisions of the Act, concealment of the smuggled goods, avoidance of duty of excise so that the proceedings for confiscation, etc. may be initiated under the Act. Section 108 of the Act empowered the officer concerned to summon any person to give evidence. When the Customs authority under the Act collects information or evidence regarding proof of contravention, etc. then he takes step for confiscation of the goods u/s 111 or 113 of the Act and for imposition of penalty u/s 112 of the Act. Section 115 of the Act provides for provisions with regard to confiscation of the conveyances. The proceedings for confiscation of contraband goods are proceedings in rem and the penalty of confiscation is enforced against the goods irrespective of whether the offender is known or unknown and it is not necessary to prove that any particular person is involved in the illegal importation or exportation. The penalty of confiscation as contained in Sections 111 and 113 of the Act is a penalty in rem, whereas, the penalty imposed u/s 112 of the Act is a penalty in personam, which is enforced against the person concerned. In this connection, reference may be made to a decision of the apex Court in the case of [Union of India and Another Vs. M/s. Mustafa and Najibai Trading Co. and Others](#).

10. u/s 110 of the Act, the proper officer has power to seize the articles only after he forms an opinion of a reasonable belief that the goods are liable for confiscation. As the seizure deprives the owner of his property, the same cannot be made on the basis of suspicion howsoever it strong may be nor can the same be seized on the basis of non-existent ground or the whim of the officer concerned. There must be some materials so as to form a reasonable belief. In other words, the belief must be of an honest and reasonable man on reasonable grounds. However, the law does not require that at that time, the matter is to be proved to the hilt that the goods are smuggled goods. Seizure is made at the initial stage to find out as to whether the same are smuggled or contraband goods or not and at that stage, a detailed inquiry before the seizure is neither permissible nor practicable nor possible. Any such attempt by the authority at that stage will frustrate

the object of the Act and will become a boon to the smugglers. There should be credible information, suggestive of the fact that the goods are liable to confiscation. It is for the officer concerned to be satisfied as to whether the materials lead to reasonable belief or not and in that view of the matter, no abstract meaning or formula can be laid down, which is to be effected in a particular case of seizure. It depends upon the facts of each case.

11. The apex Court has considered the meaning and scope of the words "reason to believe or reasonable belief in the case of [Pukhraj Vs. D.R. Kohli](#) . There, the provisions of Section 178A of the Sea Customs Act 1878 were under consideration, which provided that once it is shown that the goods were seized in contravention of the Sea Customs Act under the reasonable belief that they are smuggled goods, then the burden of proof is on the person from whose possession such goods are seized. It appears that the appellant before the apex Court was a goldsmith and while he was travelling by a train on 25-10-1956 he was searched at Raigarh Railway Station and found to be in possession of five pieces of gold bullion weighing 290.6 tolas. The same was seized by the officer concerned and, thereafter, steps were taken under the provisions of the Act and an order of confiscation was passed, which was challenged before the apex Court. One of the points raised in that case was that there was nothing on the record to show that the seizure of the gold was effected by the officer acting on a reasonable belief that the seized gold was a smuggled one. The apex Court held that while dealing with the question whether the belief in the mind of the officer, who effected the seizure, was reasonable or not, the Court is not sitting in appeal over the decision of the said officer. The Court has to only consider whether there is a ground, which prima facie justifies the said reasonable belief. The apex Court found that carrying a large quantity of gold and travelling without a ticket may well have raised a reasonable belief in the mind of the officer that the gold was smuggled.

12. The same view was reiterated by the apex Court in the case of [State of Gujarat Vs. Mohanlal Jitmalji Porwal and Another](#) . In that case, the apex Court held that while considering the question whether the officer concerned has a reasonable belief or not that the goods are smuggled ones, the Court cannot sit as an appellate forum. It is for the authority to be satisfied, prima facie, about the grounds to justify the belief and once there is a prima facie material to justify the reasonable belief, the Court has to accept the said fact, whether the Court of its own might or might not have entertained the same belief in paragraph No. 4, the apex Court held as follows :

"Whether or not the official concerned had seized the article in the "reasonable belief that the goods were smuggled goods is not a question on which the Court can sit in Appeal. If prima facie there are grounds to justify the belief the Courts have to accept the officers' belief regardless of the fact whether the Court of its own might or might not have entertained the same belief. Whether or not the officer concerned has entertained reasonable belief under the circumstances is not a matter which can be placed under legal microscope, with an over-indulgent eye which sees no evil anywhere within the

range of its eye-sight. The circumstances have to be viewed from the experienced eye of the officer who is well equipped to interpret the suspicious circumstances and to form a reasonable belief in the light of the said circumstances."

13. In that case, the accused-respondent had adorned his waistline with a waistchain, which was made of pure gold and was coated with mercury so as to give an appearance of being made of silver. The apex Court having taken note of the fact that the chain was coated with mercury and given an appearance of having been made of silver, though according to the opinion of the goldsmith, it was made of pure gold, held that the said fact was sufficient even for a layman to entertain the belief that it was smuggled gold.

14. At this stage, I would like to refer to a Division Bench judgment of this Court, which was relied upon by the learned Counsel for the petitioners, in the case of [Angou Golmei Vs. Vizovolie Chakha Sang](#) . In the said case, their Lordships have relied upon the aforesaid judgments of the apex Court and considering the meaning or the "reasonable belief and after taking into consideration the facts of that case, they came to the conclusion that the materials in that case were not sufficient to form a reasonable belief that the goods were liable to confiscation under the Act.

15. The meaning of the word "reasonable belief is well-settled. The question as to whether in a particular case, the grounds are sufficient to form a reasonable belief that the goods are smuggled ones or not, depends upon the facts of each case and as such decision in another case having different set of facts that the grounds are not sufficient to form at reasonable belief that the goods are smuggled goods, cannot be a binding precedent in other case. The conclusion has been arrived on appreciation of evidence.

16. Now, the question to be considered in this case is as to whether the respondent authorities have materials or not before them to form a reasonable belief as required by Section 110 of the Act. They had a definite information that a particular vehicle, which was seized in this case, loaded with betel-nut of third country origin was to pass at a particular time and, thereafter, the raiding party was formed and nearby at that point of time, the vehicle was found parked at R.K. Motel. No body was claimant of the truck or betel-nut found therein. The driver of the vehicle fled away. Even neither the vehicle was seized nor betel-nut was seized and the vehicle was taken to Motihari and there two dealers were called for to give their opinions about the betel-nut and they also opined that the betel-nuts, sample of which was taken from five bags on random basis, were of third country origin and, thereafter, the seizure was effected in terms of Section 110 of the Act. On all these materials, the officer concerned formed the reasonable belief that the betel-nuts were smuggled ones and this Court cannot sit as an appellate authority over the said decision of the Customs authority. Even a layman on the basis of the said materials will come to a conclusion that the same will form a reasonable belief that the goods were of third country origin and the submission advanced on behalf of the petitioners that there was no credible information to form a reasonable belief that the goods were not of third country origin and as such are not liable to confiscation under the

Act, has to be rejected.

17. Learned Counsel appearing for the Customs Department has produced a notification, which shows that there is prohibition of import of goods from Nepal to India, which have been exported to Nepal from countries other than India. It is alleged that the betel-nuts were of third country origin and were smuggled to India. An inquiry is still being held under the Act and, thereafter, it will be found as to whether there is contravention of the provisions of the Act or not and then steps for confiscation and the imposition of penalty have to be taken. In that view of the matter, it will not be proper for this Court to give a definite finding as to whether the seized betel-nuts are smuggled ones or not. It is for the authorities to consider in the light of the materials produced before them in terms of the provisions of the Act. The seizure of the articles and the truck has been made and the authorities have to proceed under the provisions of the Act and as such at this stage, any observation with regard to the merit of the case will prejudice either party and as such it is not proper to express any opinion about the merit of the case. Intervention at the initial stage of confiscation and seizure has been deprecated by the apex Court. In this case, reference may be had of a decision of the apex Court in the case of [Union of India \(UOI\) Vs. Lexus Exports Pvt. Ltd. and Another](#) .

18. In that case after seizure of the goods, the same was challenged under Article 226 of the Constitution before the High Court and further proceeding before the authorities were stayed and a direction was issued for the release of the seized goods. The Revenue approached the Division Bench and the Division Bench directed the persons concerned to export the goods during the pendency of the statutory adjudication. The apex Court held that the High Court should not have intervened in the matter at the initial stage and, accordingly, set aside both the orders passed by the High Court. Thus, in my view, no case for quashing the seizure memo is made out.

19. It appears from the record that a notice has been issued to one Nisar Ahmad u/s 108 of the Act, who is the driver of the truck in question and as such the concerned person of the petitioners, if so advised, should also appear before the authorities and assist in adjudication of the proceeding in terms of the provisions of the Act. The authorities concerned are directed to complete the inquiry as per the provisions of the Act within a period of four months from the date of receipt/production of a copy of this order and it will be open for the petitioners to appear before the authorities and present their cases.

20. So far as the release of 220 bags of betel-nut is concerned, I am not inclined to pass any order for release of the same as the matter has to be decided by the authorities as to whether the goods are liable for confiscation under the Act in case they are found to have contravened the provisions of the notification issued under the Act.

21. So far as the vehicle is concerned, the same is liable for confiscation u/s 115 of the Act. However, in the case of present nature, the owner of the vehicle in question may be asked to pay a fine not exceeding the market value in lieu of confiscation. The truck is

lying in the Customs Office and if it is allowed to remain there awaiting the final adjudication under the Act, it will be damaged beyond repair and as such I am of the view that the truck in question should be released to the owner during the pendency of adjudication under the Act by the Customs authority on furnishing security to its satisfaction. The release will be subject to the final decision of the confiscation proceeding, if any.

22. In the result, this writ application is allowed in part to the extent mentioned above.