

(1991) 05 CAL CK 0037

Calcutta High Court

Case No: Matter No. 1042/91

Kulmohan Singh

APPELLANT

Vs

Collector of Customs

RESPONDENT

Date of Decision: May 2, 1991

Acts Referred:

- Constitution of India, 1950 - Article 226
- Customs Act, 1962 - Section 108

Citation: (1994) 52 ECR 473 : (1992) 58 ELT 455

Hon'ble Judges: Ruma Pal, J

Bench: Single Bench

Advocate: Sunil Chatterjee, for the Appellant; N.C. Roy Chaudhury, for the Respondent

Judgement

Ruma Pal, J.

The petitioner is a Small Scale Industrial Unit and manufactures Electronics Products. In August 1987 the petitioner imported diverse spare components, parts and accessories from Singapore. The Bills of Entry were filed by the petitioner. According to the petitioner when the Bills of Entry were being processed the Superintendent (Preventive) of Customs seized the papers and documents as well as the imported goods. Such seizure was made on 13-8-1987. Summons u/s 108 of the Customs Act, 1962 (hereinafter referred to as the said Act) was issued to the petitioner's representative on 12-10-1987. The petitioner was granted a personal hearing by the Collector of Customs, Calcutta. According to the petitioner no indication was given regarding the charges against the petitioner even in the course of the adjudication proceedings. An order was passed by the Collector of Customs by which the value of the goods was enhanced, the goods were directed to be confiscated, release of the goods was allowed on payment of redemption fine of Rs. 2,15,000/- and personal penalty of Rs. 3 lakhs was imposed. The order was dated 12-10-87 but was received by the petitioner on 12-4-1988.

2. The petitioner paid the amount and preferred an appeal from the order dated 12-10-1987. The appeal was heard by the Customs, Excise, Gold Control, Appellate Tribunal (C.E.G.A.T.). The Tribunal remanded the matter for re-adjudication by the Collector. The order of the Tribunal was dated 7-7-1989. In remanding the matter the C.E.G.A.T. directed as follows:

"The case should be decided expeditiously say within three months or so."

3. On 22nd September, 1989 the petitioner received a notice to the effect that the matter would be examined de novo. The petitioner submitted a written submission on 18-10-1989 and prayed for a personal hearing. Such personal hearing was initially granted on 9-1-1990 but was postponed. Thereafter it appears that several letters were written by the petitioner requesting for an early date of hearing. No response however was forthcoming. Ultimately the petitioner moved an application under Article 226 of the Constitution for a direction on the Collector of Customs (Judicial) to dispose of the matter. An order was passed as prayed by this Court.

4. By an order dated 30-10-1990 the Collector of Customs (Judicial) directed the refund of Rs. 4,96,970/- paid by the petitioner towards fine, penalty and duty. Although the petitioner has filed an appeal from the order dated 30-10-1990 in respect of certain reliefs not granted by the Collector no order of stay of operation of the order dated 30-10-90 was applied for. The order dated 30-10-1990 has not been appealed from by the Customs Department. Several representations were made by the petitioner from time to time for refund of the said amount of Rs. 4,96,970/- . No such refund was made.

5. In the circumstances the writ petitioner filed this application under Article 226 inter alia for a direction on the respondents to assess the Bills of Entry in terms of the order of the Collector of Customs (Judicial) and to release the amount of Rs. 4,96,970/- forthwith together with interest at. 18% per annum.

6. The application was moved upon the notice to the respondents. The respondents were present through counsel. Counsel for the respondents conceded that the payment would be made as prayed for but as there was a question of calculation involved a little time should be granted for the purpose. Accordingly the following order was passed by this court:

"Dated 22-3-1991.

Mr. Sunil Chatterjee moves and submits for the Petitioner.

Mr. N.C. Roy Chaudhury appears for the Respondents.

The Court: It is stated by Mr. N.C. Roy Chaudhury, Ld. Counsel appearing for respondents that the Customs authorities will prepare a statement as to the exact amount payable to the petitioner and that such payment will be made by 5-4-1991.

The matter will appear as "To be mentioned" in the list on 5-4-1991."

7. The respondents however, neither prepared a statement nor made any payment to the petitioner by 5-4-1991.

8. On 12th April, 1991 it was submitted by the Counsel appearing for the respondents that the respondent required more time for preparation of the statement and payment of the amount due to the petitioner. Accordingly the following order was passed on 12th April 1991:

"12th April, 1991. Mr. Sunil Chatterjee mentions the order dated 22-3-1991 and submits.

Mr. N.C. Roy Chaudhury appears for respondents.

The Court: The payment will be made by the Customs authorities after preparation of the statement and in accordance therewith by 24th April, 1991.

This order is made in addition to the order dated 22-3-1991.

All parties to act on the signed copy of the minutes of this order as well as the order dated 22-3-1991."

9. The respondents did not however either prepare the statement or make any payment to the petitioner in spite of a specific direction in this regard by this Court.

10. The matter was taken up for hearing on 26th April, 1991. The respondents then submitted through their counsel that they were unable to make any payment as directed, because of a direction of the Board dated 18-11-1989 as well as a telex message from the Under Secretary (J) Department of Finance and Revenue, New Delhi, which reads as follows:

"It is obvious that there is no direct judgment of the Supreme Court on the question of unjust enrichment in the ease of Excise or Customs Duty (.) At the same time, Courts have relied upon the doctrine of unjust enrichment in refusing relief of refund to parties who have sought assistance of Courts. Mostly by way of writ petitions and in sonic cases by way of Civil suit (.) There is no justification in my opinion as to why the same doctrine could not also be invoked in departmental proceedings for Refund (.)

I am accordingly directed to ask you to follow the said advice of the Ministry of Law by way of refusal of refunds to parties in departmental proceedings by invoking the doctrine of unjust enrichment (.) The above instructions have the approval of the Ministry of Law, Deptt. of Legal Affairs vide letter U. No. 210 4-21307/91, dated 26-3-1991."

11. In my view the respondents are prima facie guilty of contempt of this Court. I am aware that contempt proceedings should not be initialed lightly. I am of the view that contempt proceedings once initiated should be prosecuted strictly thereafter. Therefore I reserved the matter for consideration whether on the basis of the facts

as disclosed and the law applicable a Rule for contempt should issue.

12. There is no doubt that there was a specific direction by Court to the respondents to make the payment in question to the petitioner. The order is clear and it does not appear to suffer from any ambiguity. There appears also to be no doubt that the respondents were aware of the order dated 12th April, 1991. The respondents appear to have deliberately chosen not to comply with the order because of certain instructions of their superior authorities. I am inclined not to accept such explanation at this stage particularly when it is clear that the instructions of the Board were issued in 1988 and the message of the Under Secretary is dated 1st April, 1991.

13. In any event when an order of the High Court directs a person to do something it is incumbent on that person to comply with that order. The excuse that the respondents were bound by the higher authorities is unacceptable. The order of the Court as long as stands is paramount.

14. The Officers in question are the following :

Respondent No. 1 - Mr. P.N. Malhotra,
Collector of Customs, Calcutta,
Customs House, 15/1, Strand Road,
Calcutta-700 001.

Respondent No. 2 - Mr. R. Ramchandran,
Collector of Customs (Judicial),
Calcutta, Customs House, 16/1, Strand
Road, Calcutta-1.

Respondent No. 3 - Mr. S.K. Pal,
Assistant Collector of Customs,
Air Cargo Complex,
Dum Dum Airport, Calcutta.

15. For the reasons aforesaid let a Rule be issued calling upon the respondents named above to show cause why they should not be committed to prison or otherwise penalised or dealt with for having wilfully violated the order dated 12th April, 1991 passed by this Court by not making payment as directed to the petitioner of the amount of Rs. 4,96,970/-. The rule is made returnable on 5th June, 1991. On the returnable date the respondents shall appear personally before this Court at 10.30 A.M. and shall not leave the Court without permission. The department is to draw up and serve a copy of the rule expeditiously.

Liberty is prayed for by Mr. N.C. Roy Chaudhury, Ld. Advocate, to deposit the amount in Court. Such prayer is refused. The order dated 12-4-1991 is absolutely

clear. There is no warrant to modify that order in any manner whatsoever.