

(1996) 01 BOM CK 0045

Bombay High Court

Case No: Writ Petition No. 2154 of 1995

Ranwolph Charles Luka

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: Jan. 23, 1996

Citation: (1996) 83 ELT 274

Hon'ble Judges: M.B. Shah, J; A.V. Savant, J

Bench: Division Bench

Advocate: Mrs. Rosy Rajan, for the Appellant; Mr. M.I. Sethna and Mr. V.G. Rege, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

A. V. Savant, J.

Heard both the learned Counsel and perused the entire record.

2. Petitioner seeks to challenge the order dated 14th August, 1995 passed by the Joint Secretary to the Government of India setting aside the order passed in appeal on 11th January, 1994 and restoring the original order dated 30th November, 1993 under which 100 Kgs. of silver valued at Rs. 5 lacs was absolutely confiscated.

3. The Petitioner landed in India from Dubai on 18th November, 1993. Though he claims, he had carried silver weighing 100 Kgs., which, he claims, he is entitled to import, he had abandoned the said consignment for reasons best known to him and later on came to clear the same on 23rd November, 1993. His contention that none of his relatives had come to receive him at the airport or that he had fallen sick on arrival has been rejected by the fact finding authority. By the impugned order, the Petitioner's claim that he was entitled to import 100 Kgs. of silver under Notification No. 4/1993-Cus., dated 8th February, 1993 issued by the Ministry of Finance, Department of Revenue, Government of India, New Delhi, read with Additional Collector's Instruction No. 7 of 1993 issued on 9th February, 1993 has also been rejected.

4. It was sought to be contended on behalf of the Petitioner that in order to claim the benefit of the said Notification No. 4 of 1993, it was not necessary for the Petitioner to own the silver imported; it was enough if the Petitioner was a mere carrier. We have perused the affidavit in reply filed by Shri A. H. Murshedkar, Assistant Collector of Customs, as also that of Shri Bakul Bakshi, the Commissioner of Customs (Airport). In our view, in the light of the findings of facts recorded by the Customs Authorities in this case, we are not required to decide the question as to whether the Petitioner could have imported the 100 Kgs. of silver in his capacity as a mere carrier without having owned the same. The record indicates that the Petitioner had not declared that he was carrying 100 Kgs. of silver and he passed through the "Green Channel", which is meant for passengers not having any dutiable or unaccompanied baggage. Waling through the "Green Channel" with dutiable goods tantamounts to mis-declaration and/or non-declaration. Even under the aforesaid Notification No. 4 of 1993, on which he Petitioner placed reliance, non-declaration, concealment, etc., shall be dealt with as in the past - meaning thereby that in the event of non-declaration and/or concealment, confiscation of the goods could follow. This is also clear from the instruction at paragraph 1(iv) of the Additional Collector's Instruction No. 7 of 1993 on which the Petitioner had sought to place reliance for contending that a mere carrier could import 100 Kgs. of silver.

5. Our attention has been invited to the statement of the Petitioner recorded by the Customs authorities on 23rd November, 1993, which shows that before arriving in this country, he was already paid the requisite amount in foreign exchange to enable him to pay the duty on the 100 Kgs. of silver, which duty would have worked out to approximately Rs. 50,000/-. However, he decided not to declare the silver and walked through the Green Channel concealing the fact that he had imported 100 Kgs. of silver. Even assuming, therefore, that the Petitioner was entitled to import 100 Kgs. of silver merely as a carrier without being the owner thereof (which point we are not deciding in this case), we are of the view that the finding of fact that he was guilty of concealment cannot be disturbed in writ jurisdiction. There is no illegality or impropriety in the impugned order dated 14th August, 1995.

6. Hence, the Writ Petition is rejected.

7. Issuance of certified copy of this order is expedited.