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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-23-1997

Reported in : (1998)(99)ELT658TriDel

Appellant : Hanuman Prasad

Respondent : Collector of Customs

Judgement :

On 27-6-1990, based upon some information one Shri Sampat Kumar Singhal was intercepted by police and on his search 10 gold biscuits of foreign markings found concealed in the right side thigh in anklet were seized by the police. The said seized biscuits were handed over to Customs on 27-6-1990 and were found to be 24 carat purity totaling weight 1.165 kgs. and valued at Rs. 3,70,000/-. In his statement before the Customs, City Police Inspector, Shri Man Singh on 27-6-1990 disclosed that the interrogation of Shri Sampat Kumar Singhal had revealed that he was an employee of Shri Hanuman Prasad and that the seized gold biscuits were given to him by said Shri Hanuman Prasad for onward delivery to one Shri Dhan Raj Soni.

Based upon the above disclosure, Customs Officers sent summons dated 27-6-1990 to the appellant, Shri Hanuman Prasad for causing appearance before the Customs Authorities on 28-6-1990. Appellants appeared on the said date and tendered a statement before the officers. In the said statement, he admitted that Sampat Kumar Singhal was his employee and the 10 gold biscuits in question having foreign marking were given by him with directions to deliver the same to

one Shri Dhan Raj Soni. In the said statement appellant also disclosed that the said biscuits had been given to him by one Shri Manohar Lal Mehta. Apart from this appellant also disclosed in his said statement that on previous occasions also, he has handed over gold biscuits of foreign origin to Sampat Kumar Singhal for onward delivery to Dhan Raj Soni and which job was completed by Shri Sampat Kumar Soni. Thereafter the statements of Manohar Lal Mehta and Dhan Raj Soni were also recorded by the officers. In his statement dated 29-6-1990 Manohar Lal Mehta denied having given any gold biscuits to either Surinder Kumar Singhal (sic) or to Hanuman Prasad and further denied any relation with these persons. Shri Dhan Raj Soni in his statement dated 30-6- 1990 though admitted that on previous two or three occasions Sampat Kumar Singhal had delivered gold but clarified that the same was not gold of foreign origin but was Tejabi Sona. However, he disclosed that on 26-6-1990 he had received a call from Hanuman Prasad that this time inspite of Tejabi Sona he was sending gold biscuits at the price fixed between two and the details of sending of gold biscuits through Shri Sampat Kumar Singhal has been told to him by Shri Hanuman Prasad at phone. Based upon the above facts, appellant as also the other three persons, that is, Sampat Kumar Singhal, Manohar Lal Mehta and Dhan Raj Soni were issued show cause notice by the Customs Authorities proposing confiscation of the 10 gold biscuits in question and also proposing imposition of penalty under the provisions of Section 112(b) of the Customs Act, 1962. On adjudication the Deputy Commissioner confiscated the gold in question and imposed personal penalties of Rs. 30,000/- on the appellant under Section 112B and Rs. 20,000/- on Sampat Kumar Singhal. However, the other two noticees Manohar Lal Mehta and Dhan Raj Soni were exonerated by the adjudicating authority. On appeal against the above orders before the Commissioner of Customs (Appeals), the appellant did not succeed and hence this appeal before the Tribunal.

2. Appearing on behalf of the appellants, Shri K.K. Anand, learned Advocate submitted that the entire case against the appellant has been built on the basis of the statement of Sampat Kumar Singhal and the appellants own statement. He further argued that the appellant had subsequently retracted his statement immediately that is on 29-6-1990 while moving the bail application before Judicial Magistrate. He further submits that apart from the said retraction in his bail

application a telegram was also sent by his brother to the Collector of Customs, Jaipur on 4-7-1990 alleging that the statement was recorded from the appellant under duress and coercion. A detailed affidavit was also filed by the appellant on 17-7-1990 on his release on bail. He also submitted that his Cofe Posa detention was also quashed by the High Court and a detailed order was passed by the High Court. It was, however, Shri Anand's contention that retracted statement loses its evidenciary value and the appellant cannot be penalised on the sole basis of such retracted confessional statement. He also argued that the said statement does not match the statement of the other two statements, that is, Manohar Lal Mehta and Dhan Raj Soni who have denied any links with the said seized golds. Shri Anand also argued that a part of the said statement implicating Manohar Lal Mehta and Dhan Raj Soni has not found to be correct by the adjudicating authority and that is the reason no penalty action has been taken against these persons and they have been exonerated by the learned Deputy Collector.

Arguing on this, he submitted that a part of the statement cannot be accepted and a part rejected and the same has to be read in its entirety. Learned Advocate further argued that the appellant as well as the other two persons residential premises were also raided and nothing incriminating was found therein. In support of his statements he relied upon the case of Sri Punidhapu Lokeswara Rao & Md. Abdul Manaf v. CC (Preventive) [1997 (19) RLT 542] wherein it was held that retracted confessional statement in the absence of any independent corroborative material and the voluntarily character of statement being in doubt are not sufficient to establish the culpability of the appellants. He further relied upon the Tribunal's decision in the case of Great Eastern Shipping Co. Limited and Ors. v. CC, Madras [1984 (17) E.L.T.482 (Tribunal)] to impress upon his arguments that if two persons standing on the same platform are exonerated by the adjudicating authority there is no reason why the appellant should be held guilty.

Elaborating his arguments, he submitted that in this case that Manohar Lal Mehta and Dhan Raj Soni were not penalised by the adjudicating authority whereas penalty was imposed upon the appellant. He further relied upon the Tribunal's decision in the case of Kali Charan Basant Lal v. CCE [1989 (41) E.L.T. 162] in support of his submission that retraction effects, the voluntary nature and

truthfulness of the confession and has to be considered while contesting a case. In the circumstances, he prayed for allowing the appeal by setting aside of the orders passed by the authorities below.

3. Arguing on behalf of the Department, Shri V.R. Sethi, learned JDR submitted that in this case the fact of retraction by itself is not sufficient to decrease the evidenciary value of the statement which on a visual, examination does not support the appellant contention that the signatures were obtained on blank papers. He submitted that the statement was recorded by the appellant in his own hand and on a summons having been issued by the customs. In the circumstances, it cannot be held that any pressure was used by the officers to extract the statement from the appellant. He submitted that if the customs were to apply pressure and duress on the appellant to extract a statement of their choice there was no reason why the same pressure and coercion was not applied to Dhan Raj Soni who has given a statement to the effect that Tejabi Sona and not foreign marking gold was received by him on previous occasions. At this stage, Shri K.K. Anand clarifies that Shri Soni also retracted his statement. Shri Sethi also submitted that these are quasi-criminal proceedings and strict production of evidence to establish the guilt of the accused as is done in the criminal proceedings is not required and it is only the pre-ponderance of probabilities that are required to be taken into consideration. He submitted that the statement of the appellant is duly corroborated by the statement of Sampat Kumar Singhal and also by the statement of Dhan Raj Soni wherein he has admitted having received a telegram message from the appellant as regards the handed over 10 gold biscuits to Sampat Kumar Singhal and its further delivery to Dhan Raj Soni. He submitted that the evidence on record is sufficient enough to hold the appellant guilty and each part of the statement is not required to be proved by mathematical precision as also was held by the Honourable Supreme Court in the latest case of Surjeet Singh Chabra [1997 (89) E.L.T. 646 (S.C.)] and in the case of K.I. Pavunny v. Asstt. Collector.

(Hq.), CEX Collectorate [1997 (90) E.L.T. 241 (S.C.)]. In view of his arguments, he prayed that the appellant appeal be rejected.

4. I have considered the submissions made by both the sides and have gone through the orders impugned before the Tribunal. A penalty of Rs. 30,000/- has been imposed upon the appellant on the ground that the 10 gold biscuits of foreign origin which were seized from Sampat Kumar Singhal were in fact handed over by the appellant for further delivery to Dhan Raj Soni. It is not only the appellant own statement, which was retracted subsequently, which is the basis of the above findings of the adjudicating authority but the same is based upon the appreciation of the entire evidence on record which includes the statement of Sampat Kumar Singhal as also the statement of Dhan Raj Soni. I find that the appellant statement not only disclose the details about the seized 10 gold biscuits is question but also gives a detailed information about his previous transactions also. The effect of retraction of the statement by the appellant in its bail application as also by the subsequent telegram sent by his brother and duly sworn affidavit filed after his release does not by itself reflect upon the evidenciary value of the statement which have been recorded under Section 108 of the Customs Act. No other material has been on record to corroborate the fact that the statements were recorded under coercion and duress. The statements have been given by the appellant after he was issued summons on the day prior to the day of recording the statement and he came fully prepared with the purpose of giving statement on 26-8-1990. His statement is fully corroborated in material particulars by the statement of Shri Sampat Kumar Singhal. I also find that Dhan Raj Soni in his statement though has referred to the fact of receiving Tejabi Sona and not foreign marking gold in the previous deliveries, has accepted having received a telephonic call from the appellant giving message of sending of 10 gold biscuits of foreign origin in respect of Tejabi Sona. The Honourable Supreme Court's latest two decisions referred to by the learned JDR are fully applicable to the facts and circumstances of the case wherein it has been laid down by the Apex Court that if the statements are retracted, Court is required to examine whether it is obtained by pressure or duress or by promise and whether the confession is truthful or not and if found to be voluntary, the same is to be relied upon for conviction. In other words, it has been laid down by the Honourable Supreme Court that the mere fact of retraction of the confessional statement by itself is not sufficient and if on further examination nothing is found to held the statement having been given under coercion, or

duress the same can be made the basis for holding the appellant guilty. I find that the reliance by the learned Advocate on the case law referred to above is not appropriate inasmuch as the statements in all those cases were found to be involuntary and having been given under duress on the basis of other evidence on record and not on the sole basis of retraction of the same.

I also do not find any force in the appellant arguments that if the other two noticees, Manohar Lal Mehta and Sampat Kumar Singhal has been exonerated by the authorities below, the appellant should also have been exonerated being on the same platform. This is not correct. The other two persons have not been penalised as there was not sufficient material against them. Whereas in the appellant's case the evidence is not only in the shape of the statement of the but his own detailed statement is also there which corroborates the details given by the other accused in material particulars. In view of my discussions above, I do not find any force in the appellant's appeal and accordingly reject the same.

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