

Naraina Ram Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-24-1997

Reported in : (1997)(72)LC888Tri(Delhi)

Judge : S Bhatnagar, Vice-

Appellant : Naraina Ram

Respondent : Cc

Judgement :

1. This is an appeal against the order of Commissioner of Customs, Jaipur dated 19.9.1995.
2. Ld. Counsel stated that this case relates to seizure of 235 silver chaurasas weighing 311.711 kgs. from Shri Govardhan Singh and others on 6.1.1993 by the Jodhpur Police and Customs.
3. The appellant Shri Naraina Ram was in no way concerned with the alleged silver or smuggling thereof and no penalty was imposed on him.

However, it was his jeep which has been confiscated absolutely and that is why he is aggrieved. It was their submission that the Ld.

Commissioner has erred in doing so as the silver was seized from Nissan Truck No. RJM 1729 and Jeep No. RJ 16C 0008 and not from the impugned Jeep No. WBH 3825 or WGU 8906.

4. It was also his submission that in spite of the fact that he had claimed the confiscated jeep on 17.2.1993 the Commissioner has not released the jeep to him on the ground that he was not made noticee in SCN dt. 25.6.1993 and therefore it was not open for him to release the jeep to him or to decide his claim because the said jeep was said to be figuring in another show cause notice dt. 6.1.1993 where the investigating officer had, as admitted by the Commissioner himself failed to make enquiries about the claim of the appellant.

5. It was also his submission that the Ld. Commissioner had erred in not appreciating the fact that under Section 115(2) only such conveyance was liable to confiscation which had been used in the smuggling of any goods or in the carriage of any smuggled goods and the impugned jeep as per annexure II/10A was not so used qua the impugned goods which were seized from Nissan Truck and another jeep No. RJ 16C 0008 and not the impugned jeep.

6. Furthermore in the impugned jeep cavities were made to carry sale-proceeds of agricultural produce and it has been seized at Jodhpur which is not in the Customs Area as defined under Section 2(11). In view of this position also, it is not liable to confiscation.

7. It was also his contention that since the impugned jeep was not used in the act of smuggling or carriage of smuggled goods it was not liable to confiscation irrespective of the fact who its owner was i.e. Shri Devi Lal or Naraina Ram.

8. That Ld. Commissioner has also erred in holding that Devi Lal had admitted in his statement that he had transported the seized silver upto Jodhpur by Jeep No. WBH 3825 having two cavities for further delivery to the distinct places and Shri Devi Lal Jat was very much involved in transportation and concealing of the seized goods. It was their contention that the silver was seized by the authorities in transit but was not carried in Jeep No. WBH 3825 or WGU 8906 of the Chassis No. DB 06054 or concealed by Devi Lal. Further it was incorrect to hold that Shri Devi Lal Jat had in his statement dated 6.1.1993 and 7.1.1993 stated that Registration Certificate and documents of jeep No. WBH 3825 were given to his Advocate for change of ownership in his own name as in the said statement nothing of the kind was stated.

9. It was only in the panchnama dated 6.1.1993 showing seizure of jeep No. WBH 3825 w.r.t. the giving of jeep for repair and colouring and for indicating the number as old numbers had faded and gave the papers to Advocate Shri Anand Singhal of Jodhpur for allotment of new number figure. It was also his submission that Shri Anand Singhal of Jodhpur was never contacted to collect the alleged documents whereas Shri Naraina Ram had filed his ownership claim on 17.2.1993 effective from 4.12.1992.

10. Even if it is accepted, for argument's sake though not admitted, that the impugned jeep bearing no numbers was de facto WGU 8906 and was used by Shri Devi Lal for earning to the Customs office that does not show that it was used in the act of smuggling of the impugned silver and therefore it was not liable to confiscation.

11. Ld. DR drew attention to the impugned order and emphasised that the jeep in question has been confiscated as the Commissioner found that it was used in the transport of smuggled silver. He would in particular draw attention to paragraph 30 relating to the jeep in question which reads as follows: 30. In this context, on perusal of the records, it is seen that the ownership of the seized Jeep No. WBH 3825 has been claimed by Shri Devilal Jat from Whom the vehicle was seized on 7.1.1993 based on his statements dated 6.1.1993 and 7.1.1993 recorded Under Section 108 of the Customs Act, 1962. At the time of seizure, Shri Devilal Jat had inter alia stated that the Registration Certificate and the documents were given to Advocate for change of ownership in his own name. As Shri Deepa Ram Choudhary, Advocate has subsequently filed a petition for the vehicle bearing Registration No. WGU 8906 (as against seized Jeep with Registration No. WBG 3825 seized from Shri Devilal Jat) claiming it to be actually owned by the said Shri Naraina Ram who has however, not been made a noticee in the show cause notice dt. 25.6.1993 being adjudicated by the undersigned, I find that no further investigation regarding the said claim of Shri Naraina Ram vis-a-vis Shri Devilal Jat have been made by the concerned investigating officers before issue of show cause notice in this case. As Shri Naraina Ram has not been made a noticee in respect of show cause notice dt. 25.6.1993 referred to above, it would not be possible and permissible for me to consider and decide on the merits of his claim

having regard to facts and evidence already on record as discussed above. In view of this, I do not find any force in the plea that Shri Devilal Jat has no concern with the seized Jeep No. WBH 3825 and accordingly reject the request of Shri Naraina Ram S/o Mohan Ram, R/o Osian for release of the said jeep to him as the same is found beyond the purview of the aforesaid show cause notice dt. 25.6.1993, being adjudicated by the undersigned.

31. In view of the above facts, I hold that the jeep with Registration No. WBG 3825 seized from Shri Devilal Jat on 7.1.1993 by the Customs Officers Under Section 110 of the Customs Act, 1962, is liable for confiscation Under Section 115 of the Act, *ibid* and Shri Devilal Jat is also liable to penalty Under Section 112 of the Customs Act, 1962.

12. Ld. Counsel in reply drew attention to letter dated 17.2.1993 addressed by the Advocate of the appellant to the Additional Collector of Customs, Jodhpur and the letter dt. 10.3.1995 addressed to the Collector (II) Customs, Jaipur and paragraphs 29 of the order of the Commissioner.

13. I have considered the above submissions. I observe that the Ld.

Counsel is correct in pointing out that he had claimed the ownership of the confiscated jeep on 17.2.1993 and the Ld. Commissioner has not released the jeep to him on the ground that he was made noticee in the show cause notice dt. 25.6.1993 and therefore it was not open for him to release the jeep to him or to decide his claim. Further the said jeep was also said to be figuring in another show cause notice dt.

6.1.1993.

14. I also observe that according to the Department itself the jeep intercepted by the joint naka of Jodhpur Customs and Police was jeep No. RJ 16C 0008 and the silver in question was recovered partly by from the truck in which it was hidden in the cavity behind drivers seat and partly from the cavity in the base of the aforesaid jeep beneath the front seat. The Commissioner has confiscated the silver on the ground that it was smuggled silver and the aforesaid jeep No. RJ 16C

0008 and truck No. RJM 1729 for carrying the same size. In other words the jeep in question in the present case was a different jeep which was subsequently detained vide panchnama dt. 6.1.1993 referred to by the Ld. Counsel which according to Ld. Counsel was drawn at the Customs Department's office situated at Panchwati, Ratanada and which refers to old Registration No. WBH 3825 and Shri Devilal Jat.

15. In the above circumstances, I consider that once the appellants had filed a claim about this jeep even before issue of show cause notice dt. 25.6.1993 it was necessary on the part of the departmental officers to enquire, verify and satisfy themselves about the correctness or otherwise of the claim so made.

16. The fact that according to the department this jeep was also involved in some earlier cases or was subject matter of another show cause notice does not mean that such an enquiry should not have been made. Furthermore, they were required to keep in mind the relevant provisions of the Customs Act relating to confiscation of vehicles which are said to be involved in carriage of smuggled goods.

17. Depending upon the result of such an enquiry if necessary, the applicant should have also been impleaded and served with the notice.

If a vehicle is involved in more than one case then finding is to be recorded in respect of it and its owner and the person in whose control and use it was (in relation to commission of alleged offence), in each such case and it is just possible that the adjudicating authority may come to different conclusions in each such case. But that cannot be a reason for not issuing the notice and not dealing with the claim.

18. Since the matter has not been dealt with on merits by the Commissioner insofar as it relates to this vehicle in this case, his order to the extent it relates to this vehicle is set aside and the matter remanded to the Commissioner for ordering proper investigation and issue of appropriate notice in the light of such investigation and to then pass an appropriate order in accordance with law.