Commr. of C. Ex. and Cus. Vs. Harphool Singh and Bega Ram

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-04-1997

Reported in : (1998)(97)ELT167TriDel

Appellant : Commr. of C. Ex. and Cus.

Respondent : Harphool Singh and Bega Ram

Judgement :

1. This is a revenue appeal against the order-in-appeal dated 28-2-1995 passed by Collector (Appeals), New Delhi seeking for reversal of the order and confirmation of the order-in-original. The case against the respondent that he was apprehended on 7-2-1993 while he was travelling in Haryana State Transport Corpn. bus No. HR-22-6078, while he was going from Hissar to Karanpur. The respondent was searched and from his person was found four gold biscuits, two from his left socks worn with the shoes and tied with plastic tape; marked in circle PMAP and inside SUISSE-10 Tolas 999.0 ESSAYEUR Fondeur, and another two with the same gold biscuits was recovered from right foot marked in circle "credit 999.0 SUISSE and 10 TOLAS ESSAYEUR FONDEUR. The total weight of each gold biscuit was 116.650 gms. and purity of 24 cts. In this way the total weight of four biscuits was 466.600 gms., 40 tolas estimated at Rs. 1,86,000/-. The statement of respondent was also recorded, who explained that he had purchased the same from one Shri Om Prakash Soni.

In the statement, to a particular question, he stated that he did not go to Delhi, but stated that Shri Om Prakash Soni had sent one person to give him the gold biscuits. The Customs Officers also recorded the statement of Shri Om Prakash Soni, who stated that the persons sent to the respondent was one Shri Bega Ram, who had brought this gold through legal source and Shri Bega Ram had paid duty. The paying receipt was also produced. Shri Bega Ram produced an affidavit before the authorities on 12-2-1993 confirming that he had gone to Dubai on 19-11-1992 and came back by Flight and his passport is No. F-180617 and he had brought 41 gold biscuits for which he paid the duty amount, of Rs. 1,05,242/- by baggage receipt No. 45643 and had paid 300 dollars at the counter. He also stated in the affidavit dated 12-2-1993 that he had given four gold biscuits to Shri Harphool Singh on 6-2-1993 in the evening. He also stated that the two gold biscuits bore different markings. He knew Shri Harphool Singh, respondent who had told him that he wanted 40 tolas of gold. The respondent also filed an affidavit on 13-2-1993 confirming that he had purchased these gold biscuits on 6-2-1993 from Shri Bega Ram, who had legally paid these goods and had paid duty in terms of the revenue receipt noted in the affidavit. He explained that the Customs Officers had seized gold biscuits on 7-2-1993. He also explained that seized gold was not a smuggled one but it was legally imported, that he had a photocopy of passport acknowledge receipt given to Shri Bega Ram through Customs officers. He stated that his signatures were obtained under duress on wrong statements and panchnama. All these details have been alleged in the show cause notice. However, the show cause notice stated that the statement cannot be accepted and they were called upon to explain as to why gold should not be confiscated under Sections 111(d), 111(b) of the Customs Act and as to why they should not be penalised under Section 112 of the Act. In reply to the show cause notice, the respondent again reiterated that he had purchased the legally imported from Shri Bega Ram and relied on the affidavit filed by him and to the documents.

However, the adjudicating authority did not accept the pleas. He ordered for confiscation. He has almost imposed a penalty of Rs. 10,000/-. On appeal the Collector (Appeals) on a fair appreciation of the matter, held that the respondents have established that the gold was legally imported by Shri Bega Ram, who had imported them as per Baggage receipt No. 45643 dated 9-11-1992 of IGI Airport, New Delhi, on his return from Dubai, where he was employed as per his Passport No.3/7306/89. Shri Harphool Singh, who is an illiterate person was asked to give the receipt. Ld. Collector has held that the use of certain legal expressions in the English language being unknown to Shri Harphool Singh, it is, therefore, observed by Collector that though these have been used in the statement, purported to have been made by Shri Harphool Singh but this statement is an invention of the Customs Department, as Shri Harphool Singh could not have formulated it.

Further, ld. Collector had observed that there appears to be absolutely no reason why the version of Shri Bega Ram based on genuine records should not be accepted. Ld. Collector has further held that these documents fully prove that the gold was not smuggled one and was legally imported in India by a non-resident in terms of Notification of Govt. of India ITC Order No. 83/90-93, dated 29-2-1992 and Notification No. 18/92-Cus. (N.T.), dated 1-3-1992. Ld. Collector has observed that in view of this ITC order referred to above, there is no restriction on sale of such imported gold. The gold is not notified under Chapter IVA of the Customs Act and therefore, the appellants or the person carrying the gold is also not required to keep any transport voucher or any document showing legal import of the gold and, therefore, even if it is held that the appellant did not submit the Baggage Receipt, copy of the passport of Shri Bega Ram at the time of seizure of gold, the seizure was illegal without giving any opportunity to the appellant to produce the legal document. Ld. Collector has observed that without considering the Baggage Receipt, copy of Passport affidavits of appellants and the statement of Shri Om Prakash Soni, the show cause notice dated 16-7-1993 was issued which was duly replied to by the notices. She also observed that it was specifically maintained that to prove that the statement was prepared without supplying the copies of documents at the time of search and seizure, he may be allowed to cross-examine the seizing officers and the Panch witnesses and also to prove that the alleged statement of the appellant, Shri Harphool Singh was not true and voluntary statement, cross-examination of the officers who recorded the statement may be allowed. Ld. Collector has held that this opportunity was not allowed by the ld. Additional Collector for the reasons best known to him, and without considering the true copy of the Baggage Receipt, Passport, Affidavits of the appellants, he has passed the impugned order wherein he confiscated the four gold biscuits and imposed a penalty of Rs. 10,000/-. The ld. Collector has further observed that in view of the show cause notice, against Shri Om Prakash Soni, being dropped, the confiscation of gold and imposition of penalty against the appellant is illegal and unjustified, as it was Shri Om Prakash Soni, who had sent Shri Bega Ram to Shri Harphool Singh. It was further held that in dropping the case against Shri Om Prakash Soni, the adjudicating authority, in fact implies that there was no illegal dealings. He has concluded that it is logical to come to the conclusion that no contravention of any of the laws then in force has taken place, and that, therefore, both the seizure and the confiscation and the imposition of the penalties are illegal.

2. I have heard both sides in this case. Ld. DR drew attention to the grounds in appeal memo made out by the revenue. He has made out furnished copy of the translation and the Panch statements and order-in-original. He stated that the respondent did not state at the time of recording the statement, that he had given the receipt and that he has purchased from Shri Bega Ram. His initial statement is correct and subsequent affidavit of Shri Bega Ram and the respondent is an after thought, which should not be accepted. He also pointed out that the respondent ought to have cross-examined the Panch witnesses to show that he had made the statement pertaining to the acknowledge receipt and having purchased gold from Shri Bega Ram. He also pointed out that there was discrepancy in the description of marks on the gold in the baggage receipt and therefore, the respondent has not proved, that it is not a smuggled gold. Therefore, he submits that the order passed by the adjudicating authority is a correct order, which is required to be accepted. He further submits if he had produced the receipt at the time of seizure before the Customs Officers, his case could have been considered.

3. Countering the arguments, at the outset, ld. Advocate pointed out to the order passed by the Special Magistrate who by his order dated 12-3-1993 has recorded the statement of the department before him, that the gold has not been found to be smuggled one and therefore, the department has no objection to the application of the accused for discharge be allowed. Magistrate after considering the department's plea discharged the accused of the offences charge under Section 135(1)(i) of the Customs Act, 1962. Ld. Advocate also relied on the order of the Commissioner (Appeals). He points out from the Panchnama that the marking which have been recorded is the same as the markings on the baggage receipt. He submits that the grounds made in the appeal memo are that both the markings

do not match is incorrect.

4. On careful consideration of the submissions made by both the sides and on perusal of the records, at the outset, I am of the view that the department themselves had before the Special Judicial Magistrate submitted in writing that the gold has not been found to be smuggled one and that the department has no objection if the application of the accused for discharge is accepted. Based on the written submission of the department, the Special Judicial Magistrate (Economic Offences) Rajasthan, Jaipur has discharged the accused by his order dated 12-3-1997 under offence, charged under Section 135(1)(i) of the Customs Act, 1962. In this appeal the revenue has taken a ground that the respondent has not proved that the gold is not a smuggled one. In this regard, reliance has been placed on the baggage receipt. I notice that the revenue has incorrectly stated this fact, as the photocopy of the Panchnama placed before me clearly shows the marking tally. There is no such discrepancy between the marking on the baggage receipt with that of the marking on the seized gold. The ld. Collector (Appeals) has taken up each of the ground and has given a clear finding. After the statement of the respondent was recorded, the Customs Officers immediately went in search of the premises of Shri Om Prakash Soni.

Shri Om Prakash Soni gave a statement that he had sent Shri Bega Ram to sell the gold to the respondent. He has also stated that Shri Bega Ram had imported this gold legally through baggage receipt and has paid duty. He has also given receipt to the officers, when they took down his statement. Shri Bega Ram has filed his affidavit in support of the respondent's affidavit. All these facts have stated in the show cause notice. There is sufficient collaboration of the statement of Shri Om Prakash Soni, with that of the documents produced by Shri Bega Ram.

Therefore, the initial burden laid on the assessee has been discharged.

The respondent has discharged their initial burden that the gold is not a smuggled one. There is no other evidence produced by the department to show that the seized gold was a smuggled one. It is also not shown that the respondent is a regular smuggler or dealer in smuggled gold.It is an admitted fact that the Govt. of India by the ITC order has permitted import of the gold and the said gold is being sold in the market. The respondent is a goldsmith and he has been purchasing the gold from such legal source. Therefore, the Collector (Appeals) has rightly accepted this evidence. The observation of the Collector (Appeals) that once the case against Shri O.P. Soni had been dropped, nothing remained against the case is also a correct observation. The respondent had clearly given the name of Shri O.P. Soni. The Customs Officers immediately approached Shri O.P. Soni and searched his premises and immediately Shri O.P. Soni explained that the gold sold to the respondent was a legal gold imported by Shri Bega Ram. Therefore, even on the basis of the allegation made in the show cause notice, no case has been made out against the respondent. Therefore, the Collector has rightly allowed the respondent's appeal. I have gone through the individual grounds made out in the appeal and I do not find any merits in the same. In that view of the matter, I confirm the order of the Collector (Appeals) and dismiss the appeal.