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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-19-1998

Reported in : (1998)LC200Tri(Delhi)

Appellant : Pradeep Kumar Singh

Respondent : Commissioner of Customs

Judgement :

1. This appeal arises from the order passed by the Commissioner (Appeals) ordering absolute confiscation of seized goods and Indian Currency of Rs. 50,950/- and also imposing personal penalty of Rs. 4,000/- under Section 112 of the Customs Act, 1962. The show cause notice states that on the basis of a specific information that the appellant is engaged in the smuggling of foreign made goods and upon proper verification of information, that smuggled goods are kept secretly in his residence at 128-A, Alopibagh, Allahabad. A search warrant was issued under provisions of Section 105 of Customs Act. On reaching the premises at 8 A.M. on 21-6-1994, the premises was found locked. Enquiries from the local residents revealed that the residence was open in the morning and a relative of Shri Pradeep Kumar Singh was staying there. The officers waited in vain till about 12.30 P.M. and nobody turned up, therefore the lock was broken and opened in the presence of two witnesses and the search was made. On search of premises they found foreign contraband goods namely, X-Ray films, Calculators, Floppy discs of computers, telephone sets, emergency lights, clothes and other miscellaneous goods of foreign origin valued at Rs. 46,773/-. Shri Pradeep Kumar

Singh was not present during the course of search. The search also revealed Indian Currency worth Rs. 50,950/-. It is alleged in the show cause notice that all these items are foreign marked goods and they are of smuggled goods liable for seizure and the Indian Currency is of the result of sale proceeds of foreign goods. The statement was recorded before the show cause notice.

The appellants statement was also recorded on 27-6-1994. In this statement he mentioned that he was bringing the goods from Delhi from open shops and selling them in Allahabad on the orders placed by the local shopkeepers. He also mentioned that some of the items did not have foreign mark and they were not from the foreign countries. He had also mentioned that the cash belong to his wife and it was not his. The Additional Collector in his order has merely stated that his plea is an afterthought. He has held that his statement leads to conclusion that he had been smuggling goods of the third countries for monetary purpose, hence liable for penal action. He has also held that Indian Currency is part and parcel of that money which was obtained by sale by third country goods and it did not pertain to his wife, as it is unsubstantiated. Hence he ordered for absolute confiscation and penalty of Rs. 4,000/-. The learned Commissioner also has not given a detailed finding but merely agreed with the Additional Collector's order.

2. The learned Advocate points out that even as per the annexure to the show cause notice which gives the details of the goods at Sl. No. 5, 15 No. of Zip YKK merely mentioned foreign origin, so also in respect of Sl. No. 7, 3 No. of telephone sets, Sl. No. 8, 15 packets of Buttons, Sl. No. 9(A), White cloth (Zeenat), Sl. No. 9(B), Black cloth (Zeenat).

He pointed out from the Sl. No. 9 that it contained individual name and yet the officers had taken it as foreign name without mentioning the country. It is his submission that these Sl. Nos. are of Indian goods and there was reasonable belief even to come to the conclusion that they were of third countries.

3. As regards the other items on which the markings of the respective country has been shown, the learned Advocate did not want to seriously contest this issue. However, he has seriously contested with regard to these Sl. Nos. and seizure of Indian Currency. It is his contention that Indian Currency were pertaining to the

wife of the appellants and his wife ought to have been examined by the Officers. He also submits that no conclusion can be drawn that such Indian Currency was part of the proceeds of smuggled goods. He relied on the judgment rendered in the case of Ramchandra v. CC, as reported in 1992 (60) E.L.T. 277, wherein the Tribunal held that the Indian Currency cannot be retained by the department and the same is required to be returned as the department had not proved the same were sale proceeds of the smuggled goods and that was required to be established under Section 121, unless the criterion of Section 121 is established which are as noted :- (iii) The sale must be by a person having knowledge or reason to believe that the goods were smuggled origin.

(iv) The seller and the purchaser and the quantity of goods must be established by the Customs authorities.

The learned Counsel pointing out to this portion of the judgment states that there has been no violation of Section 121 and this criterion have not been established for seizure of Indian currency.

4. He further relied on the judgment of the Tribunal rendered in case of Abdul Mannan v. CC, as reported in 1991 (54) E.L.T. 350, wherein the Tribunal considered various other judgments pertaining to seizure of Indian Currency and held that Indian Currency could not be seized as the same was not shown to be proceeds of smuggled goods and as also because that there was a claim of 9 other persons with affidavit claiming ownership of the seized currency.

5. The learned Counsel relied on the judgment rendered in the case of Hukmi Chand Ghewar Chand Saraf v. CC, as reported in 1994 (74) E.L.T.56, wherein the Tribunal relying on its earlier Judgement rendered in the case of Ramchandra held that the burden falls on the department to establish the ingredients of Section 121 and non-establishing those reasons would not entitle them to seize the Indian Currency.

6. The learned DR vehemently argued and supported the order. He submitted that the appellant himself had confessed about his involvement in purchasing foreign marked goods and selling the same. He had also stated that the Indian Currency

were proceeds out of business transactions. His wife did not come forward to claim and therefore, the conclusion arrived at by both the authorities is in terms of provisions of Section 121 of the Customs Act.

7. On a careful consideration of the submissions, I notice that the learned Advocate has not seriously challenged the confiscation of Sl.

No. 1 which deals with floppy discs, Sl. No. 2, Tiger Head Torches, Sl.

No. 3, (i) FIFU 178 ET (ii) Outlantern SC 991, Sl. No. 4, Calculators Casio Fractional Calculators, Sl. No. 6, National Panasonic rechargeable cells, Sl. No. 10, One packet X-Ray films Konica and Sl.

No. 11, Disposable Needles. All these Sl. Nos. specify names of the foreign country and shown in the annexure, while in S.No. 5 pertaining to Zip YKK, Sl. No. 7, 3 No. Telephone sets, Sl. No. 8, 15 packets Buttons, Sl. No. 9(A) 5 x/i metre White cloth (Zeenat), Sl. No. 9(B), 5 l/i metre Black cloth (Zeenat); On all these items, there is no country's name shown except foreign origin written against those items.

The Sl. No. 9 clearly shows the name "Zeenat". This itself indicates that there cannot be a conclusion that these could be goods of 'foreign origin' unless the department demonstrates and shows that the goods had foreign marking and were of foreign origin of a specific country.

There cannot be a prima facie conclusion or reasonable belief that the same are of smuggled nature. Therefore, the department have not discharged their burden of showing Item Nos. 5, 7, 8, 9(A) & (B) being of foreign origin and hence their confiscation is required to be set aside and the same is ordered.

8. As regards the other Sl. Nos. there is marking of respective countries and there is no serious challenge to the same, hence its absolute confiscation is sustained. However, it has to be seen as to whether the same can be released on imposing redemption fine. In view of the present relaxed policy of granting import in respect of various items the lower authorities are required to consider the plea for release on redemption fine. Therefore, the matter pertaining to these Sl. Nos. which have

been absolutely confiscated is remanded to the lower authorities to consider the release on imposition of redemption fine.

9. As regards the confiscation of Indian Currency, the learned Counsel has brought to my notice several judgments. In the case *Ramchandra v. CC*, the Tribunal has brought out the ingredients under Section 121 of Customs Act, which are required to be established for the purpose of ordering absolute confiscation. It is noticed that the appellant is not a smuggler, who is bringing the goods from foreign countries. The admitted position is that he is purchasing the goods from the open market from Delhi. Therefore, in the circumstances like this, it cannot be stated that he is directly indulging in smuggling and that all the proceeds arise from such deals. The appellants being a local person buying the goods from open market and selling the same to the dealers therefore, in such circumstances, a presumption cannot be drawn that the Indian Currency is arising out of the transactions of sale and purchase of goods of smuggled origin. The appellants had clearly stated that the Cash pertains to his wife. When the officers visited his house it was locked. They have waited for only 4 hours and not till dusk. It is of a common knowledge that people return home just before dusk or thereafter. However, they have taken the decision to break open the lock and carry out the search. When the statement was recorded, he had categorically stated that the cash pertains to his wife. It became incumbent upon the officers to have recorded the statement of appellant's wife. In view of the overall facts and circumstances of the case, it cannot be said that the appellant has made out an 'afterthought' as remarked by the lower authorities. In that view of the matter, the seizure and absolute confiscation of Indian Currency is required to be set aside in terms of the ratio of the judgments cited by the learned Counsel and on the findings arrived at by this Bench.

Ordered accordingly.

10. I notice that the penalty imposed is only Rs. 4,000/-. The learned Advocate submits that in view of the Indian Currency not being confiscable and some items are also not being confiscable, the penalty is required to be reduced. Noting this submission, I reduce the penalty to Rs. 2,000/-.

11. In the result, absolute confiscation of items at Sl. Nos. 5, 7, 8, 9(A) & (B) is set aside. All these goods are directed to be returned to the appellant.

12. As regards the other items are concerned, the matter is remanded to the lower authorities for considering the prayer of the appellant for release of the same on imposition of redemption fine.

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