A.K. Gupta and ors. Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-08-1999

Reported in : (1999)(83)LC475Tri(Delhi)

Judge : J Balasundaram, S T G.R.

Appellant : A.K. Gupta and ors.

Respondent : Cc

Judgement :

1. By the impugned order, the Commissioner of Customs, New Delhi, has confiscated 3 antique pieces viz. part of pillar depicting Dharam Chakra and other decorated motifs, part of pillar depicting stupa and other decorated motifs and seated Jaina Thirthankara in Dhyana Mudra on a Pedestal, totally valued at Rs. 95 lakhs, attempted to be ex-ported under Shipping Bill dated 30.4.1992 in contravention of Section 3 of the Antiquities and Art Treasures Act, 1972 which prohibits export of antiquities outside India, confiscated remaining brass, wooden, iron and stone artware covered under the same shipping bill, and imposed a penalty of Rs. 5 lakhs on the first appellant, penalty of Rs. 1 lakh on the second appellant and penalty of Rs. 10 lakhs on the third appellant. The first appellant has been penalised as he is the person who had filed the papers for the export of the consignment in the name of M/s. Nova Fashions, as the representative of M/s. S.K. Bhatnagar & Co., Customs House Agent. Penalty has been imposed on the second appellant who is the active partner in M/s. Nova Fashions for abetting the attempt to smuggle antiquities which are liable to confiscation.

The third appellant has been treated as the kingpin of the whole attempt to export antiquities against the provisions of law.

3. The basis of the allegations that some of the goods in the consignment are antiquities is based upon the report dated 16.9.1992 found at page 45 of the paper book in C/315/97-NB filed by R.K. Jain of the Director (Antiquities) from Dr. I.K. Sharma, Archaeological Survey of India. The report is reproduced below: Letter No. 8/4/92-Ant., Government of India, Archaeological Survey of India, New Delhi - 11 dated 16.9.1992 addressed to the Additional Collector or Customs, Air Cargo Complex, IGI Airport, New Delhi.

Sub: Examination of 6 pcs. suspected to be Antiques - Shipping Bill No. 019081 dated 30.4.1992.

With reference to your letter No. VIII/AC-Export/6b/l54/92/3557 dated 27.8.1992 on the subject cited above, I have the honour to inform you that five objects were presented by your representative for examination before the undersigned, the authorised nominee of the Director General, Archaeological Survey of India, New Delhi on 10.9.1992 in the office of the Director General, Archaeological Survey of India, New Delhi. I, on behalf of the Director General, Archaeological survey of India, New Delhi, examined the said five objects on the said date and declared two objects as non-antiquities and three objects as antiquities, as per decision, indicated against each:1.

Stone slab depicting foot prints, cms Non-antiquity stone 55x36.52.

Part of a door jamb showing ya- 52.5x26 Non-antiquity muna standing on tortoise with a3.

part of a pillar depicting Dharma- 129x26.6 Antiquity chakra and other decorated mo-4.

Part of a pillar depicting stupa 93.5x28.5 Antiquity and other decorated motifs, Stone5.

Seated Jaina Thirthankara in 31x25.7 Antiquity Dhyana on a pedestal, Stone Five photographs of five objects duly signed and authenticated are/enclosed herewith.

4. We find that the first appellant had sought permission to cross-examine inter alia to cross-examine the author of the above report as well as Shri G.N. Pant, Member of the Committee on valutiation of the consignment. The adjudicating authority has rejected the request on the ground that the appellant did not furnish any reasons for cross-examination (para 31 of the impugned order). We, however, agree with the learned Counsel for the first appellant that the cross-examination of the Director (I.K. Sarma) ought to have been allowed because it is the Director, Dr. I.K. Sarma's report which forms the foundation of the entire case and that, therefore, the denial of the opportunity of cross-examination of Dr. I.K. Sarma has resulted in contravention of the principles of the natural justice. Further, we find that the adjudicating authority has relied upon the cross-examination of Shri Narayan Singh, Superintendent, Air Cargo, which took place on 27.6.1996, (in addition to reliance of statements of co-noticees) to hold that the third appellant, R.K. Jain was involved in the attempt to export antiquities and hence, he was liable to penalty (para 42 of the impugned order); but the record does not disclose that any notice for hearing on any date subsequent to 30.6.1994 (which is prior to the date of cross-examination of Narayan Singh) was sent to R.K. Jain, who has established before us with reference to the records that he had shifted his residence and intimated the Customs authorities of the change of address vide his letter dated 21.3.1994 (page 100 of the paper book) and that the notice for hearing on 30.6.1994 was sent to him at his new address and he appeared, but asserts that no notice for any subsequent hearing was ever received by him. We are of the view that it was incumbent upon the adjudicating authority to issue notice of hearing to R.K. Jain after conducting cross-examination of Narayan Singh and non-issue of notice for personal hearing subsequently has resulted in gross violation of the principles of natural justice as far as the 3rd appellant is concerned. For the above reasons, we set aside the impugned order and remand the matter to the Commissioner of Customs, New Delhi for de novo adjudication after extending an opportunity to the appellants to cross-examine the Director (Antiquities) of the Archaeological Survey of India and after extending to the appellants an opportunity of being heard before passing fresh orders. The appeals are thus allowed by way

of remand.