Ashok C. Sawant and ors. Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-13-1999

Reported in : (1999)(85)LC495Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Ashok C. Sawant and ors.

Respondent : Cc

Judgement :
1. These three stay petitions have been heard on 17.3.1999. They are filed in the three Appeals against the decision of the Commissioner of Customs, Air Cargo Complex, Sahar, Mumbai, whereunder he had directed the appellant Tukaram G. Chalke in Appeal No. C/927/98 to pay Rs. 2 lakhs, the appellant Ramkrishna G. Chavan in Appeal No. C/1032/98 to pay Rs. 3 lakhs and the appellant Ashok C. Sawant in Appeal No.C/1031/98 to pay Rs. 5 lakhs as penalty.

2. In the early part of March, 1995 officers of the Air Cargo Intelligence Unit had information to the effect that certain people were unauthorisedly exporting Indian and foreign currencies worth several crores of rupees through speed post parcels to Dubai by Emirates flight No. EK-501 on 12.3.1995 at 0430 hrs. The postal authorities handed over eight postal mail bags under cover of a challan destined to Dubai. The said bags were taken over by the Customs officers in the presence of two independent witnesses. They were searched and three post parcels contained in bag 70/2 were marked as A, B & C. In the bag A, 40 bundles of 100 each Indian

currency notes in the denomination of Rs. 500/- and foreign currencies of different denominations, namely British pounds, Omani riyals, Saudi riyals, Canadian dollars etc. to the tune of Rs. 3,29,193.50 were found. The total value of the Indian currency found in that parcel was Rs. 23,39,193.50. The parcels marked as B & C on examination were found to contain Indian and foreign currencies worth Rs. 26,71,955/- and Rs. 25,25,150/- respectively. After recording statements of the appellant Tukaram Chalke in Appeal C/927/98 who gave three statements, two statements were given on 29.3.1995 and 24.8.1995 and the last statement was given on 28.2.1996. It is the case of the appellant Chalke that on 29.3.1995 he stated that he was aware that the letter/parcel was more than 200 gms. The booking clerk was required to verify the contents of the letter and only then accept the same for booking and he accepted having received speed post parcel bearing Nos. 44837 and 44898 and stated that he had verified the contents of the said speed post (para 25). Subsequently also by his further statement on 24.8.1995 he re-confirmed his earlier statement made on 29.3.1995, but, on 28.2.1996 he changed his statement. His counsel says that it was due to apprehension his client had stated so. He argues that the entire episode has occurred due to pressure put by Ravikant G. Gorde who was working as a Sub-post Master and was Secretary of the Union of postal staff. He stated that in the covers the contents were diaries and calendars only. This story he has trotted out in the latter statement because the appellant was afraid of R.G. Gorde. It is argued by the learned Counsel on behalf of the appellant that the appellant was merely a class IV employee who has been promoted and working as a clerk, therefore he was mentally overpowered by Gorde's instructions and he is innocent of the charges.

3. As far as the other appellants are concerned, namely Ramkrishna Chavan and Ashok Sawant, he acted under instructions of Ashok Sawant otherwise known as Kadam. Both appellants' activities have been fully described in paragraphs 145 and 146 of the impugned order. The appellants' main contention is that when lady clerks, namely Ms. Priya Sanjay Sahani referred to in para 16 and Ms. Neeta Desai referred to in para 17 persons similarly placed having not been issued show cause notices, it is wrong on the part of the adjudicating authority to levy such a heavy penalty on the appellants. The two appellants, namely Sawant and Chavan (appellants in C/1031 and 1032/98) have filed statements showing their financial

ability, viz. they live in a small chawl and own the same. As far as the other appellant Chalke is concerned, he did not even file any statement regarding financial status, viz. owning immovable property.

4. The learned DR, Shri A.K. Chatterjee, took us through various paragraphs of the impugned order to indicate how the appellants have headed and abetted the export of foreign exchange and Indian currency without the proper sanction from the Reserve Bank (paras 45, 63, 92,100 & 145). He also stated that the consignor's and consignee's address found to be bogus.

5. We have considered the rival submissions. We are of the view that prima facie the violations alleged against the appellant have been committed. Whether such violations have actually been committed or not have to be gone into in detail at the time of disposal of the final hearing stage.

6. As far as the appellant in Appeal C/927/98 is concerned, Chalke does not even mention anything in respect of his financial ability. The other appellants in Appeals C/1031 and C/1032 are concerned, in their applications they have stated that they are residing in residences of their own along with other members of the family. Penalties imposed on Chalke is Rs. 2 lakhs, on Sawant is Rs. 5 lakhs and on Chavan is Rs. 3 lakhs. We are conscious of the fact that they are all employees working in Postal Department. It is not possible for them to pay the entire sum of money at one go. Taking the totality of the circumstances we are of the view that to enable the appellants to prosecute the appeals, on the basis of the prima facie view of their respective roles, we direct Chalke to pay Rs. 10,000/-, appellants Sawant and Chavan to pay Rs. 20,000/- each within two months from the receipt of this order. On such payment, there will be waiver of payment of remaining sum of the money and stay the recovery thereof.