

**Balraj and ors. Vs. Cc**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Jun-04-1999

**Reported in :** (1999)(85)LC790Tri(Delhi)

**Judge :** J Balasundaram, S T G.R.

**Appellant :** Balraj and ors.

**Respondent :** Cc

**Judgement :**

1. The appellants herein are aggrieved by the order of the Commissioner of Customs, New Delhi who has inter alia confiscated tempo Nos. DDL 3701, DBL 2035 and DDL 5031 driven by them on 5.2.1994 on the ground that the vehicles were carrying contraband goods such as air conditioners, microwave ovens, colour TVs and movie cameras, all of foreign origin, with option to redeem on payment of a fine of Rs. 2 lakhs each and imposed a penalty of Rs. 10,000/- on each of the appellants.

2. We have heard Shri V.R. Sethi, learned Advocate and Shri H.K. Saran, learned SDR.3. We find that none of the 3 drivers have admitted that they had knowledge that they were carrying contraband. On the other hand, Satish Kumar and Joginder had sated that their tempos were engaged for hire by one Rajiv Sarin and while carrying the goods, the tempo was stopped by Customs Officers and that Rajiv Sarin produced some documents which was not accepted by the officers, who, therefore, took the tempo and the goods, along with Rajiv Sarin, to the

Customs House, and that they did not know about the contraband nature of the goods being carried by them. Balraj has stated that his tempo was hired by one Sanjeev Sarin on payment of Rs. 175/- for transporting household goods from one premises to another in Rohini and that he accordingly went along with Sanjiv Sarin who was driving a Maruti car and that after the goods were loaded in his tempo, Customs officers arrived there and the tempo with the goods along with other two tempos driven by the other two appellants, were taken to the Customs House. He denied all knowledge of contraband nature of the goods carried by him in his tempo. None of the other noticees in the present case have attributed any knowledge of the offending nature of the goods to the drivers of the tempos. The adjudicating authority has invoked Section 115 of the Customs Act, 1962 for confiscation of the tempos for being used in transportation of smuggled goods; however, the provisions of Section 115(2) are not attracted in this case since the temp drivers have shown that the vehicles were used as a means of transport of smuggled goods without knowledge or connivance of the tempo owner or the drivers (the appellants herein), who were the persons in charge of the conveyance.

We, therefore, set aside the confiscation of the three tempos.

4 Penalty has been imposed upon these 3 appellants under Section 112 of the Customs Act; however, Section 112(a) will apply only in the case of omission or commission rendering goods liable to confiscation under Section 111 or abatement of such omission or commission, while the appellants herein cannot be held to have done or omitted to do anything so as to render the seized goods liable to confiscation and, therefore, Section 112(a) is not applicable in this case. Section 112(b) is also not applicable because there is no material on record to show that any of the above appellants acquired, possession of or were in any way concerned in carrying/removing/depositing/concealing/selling or purchasing/dealing with any goods which they knew or had reason to believe are liable to confiscation under Section 111. Hence penal action against these appellants cannot be sustained and is accordingly set aside.

5. In the result, confiscation of the 3 tempos and the penalties on the appellants are set aside and the appeals are allowed.

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