

Pawan Bansal and ors. Vs. Cc

Pawan Bansal and ors. Vs. Cc

SooperKanoon Citation : sooperkanoon.com/16035

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-15-1999

Reported in : (2000)(88)LC82Tri(Delhi)

Judge : J Balasundaram, S T G.R.

Appellant : Pawan Bansal and ors.

Respondent : Cc

Judgement :

1. By the impugned order, the Adjudicating authority has inter alia imposed a penalty of Rs. 2 lakhs on Shri Pawan Bansal (Appellant No. 1) and Rs. 25,000/- each on Shri Rajiv Sarin (Appellant No. 2) and Smt.

Meena Sarin (Appellant No. 3) under Section 112 of the Customs Act, 1962 for their involvement in smuggling of consumer goods of foreign origin valued at Rs. 13.72 lakhs (which were recovered on 5.2.1994 from three tempos, two near Mangolpuri and one in Rohini) into India in contravention of the prohibitions imposed by Exim Policy 1992-97 notified under Section 3(2) and Section 4 of the Foreign Trade (Development and Regulation) Act, 1992 and in contravention of Sections 77 and 79 of the Customs Act, 1962 and Rule 7 of the Baggage Rules, 1978. The Commissioner of Customs has absolutely confiscated the seized goods and has also confiscated Maruti Car No. DNA 1992 (claimed by Mrs.

Meena Sarin) valued at Rs. 1.5 lakhs seized on 5.2.1994 in Rohini, with option to redeem the same on payment of a fine of Rs. 75,000/-. The electronic goods in question are being claimed by Shri Pawan Bansal, Appellant No. 1 and blankets are claimed by appellant No. 3.

2. We have heard Shri S.C. Chawla, learned Advocate for the appellants who mainly contends that the seized goods were declared on their import into India and were cleared on payment of duty as evidenced by Baggage Receipts and are therefore, not liable to confiscation and that Shri Pawan Bansal is a bonafide purchaser of the goods for consideration and therefore, not liable to penalty and that the other two appellants are also not liable to any penal action since they are only dealing in goods legally acquired by Appellant No. 1.

3. On the other hand, the learned DR Shri H.K. Saran submits that the entire evidence on record points to Appellant No. 1 being the kingpin in the operation of fraudulent import into India of consumer goods of foreign origin and clearing the same in the name of poor innocent workers engaged in small jobs in Dubai under fake/fictitious TR claims or under Baggage Rules and that the goods have been imported in contravention of the provisions of law, thereby rendering them liable to confiscation and Shri Pawan Bansal liable to penalty and he also submits that the penalty on Appellant No. 2 and 3 is also sustainable, since the record clearly establishes that both of them had knowledge of liability of goods to confiscation, and yet dealt with such goods.

4. We find from the statement of Shri Rajiv Sarin (Appellant No. 2) who was in one of the two tempos intercepted by the Customs officers on 5.2.1994, near Madhuban Chowk Petrol Pump on Outer Ring Road, Mongolpuri that the seized goods belonged to Shri Pawan Bansal who used to clear them through passengers claiming TR concessions; that the goods used to be sent by one Dr. Goel and Nopr Bhai alia Noora of Dubai to appellant No. 1 as per plan; that passengers used to be arranged by Dr. Goel and Noora to carry goods from Dubai to India for appellant No.1 under TR concessions by promising them payment of Rs. 10,000/- to Rs. 12,000/- each along with free passage from Dubai to India, and free board and lodging in India, and other expenses including Customs duty

payment and food, etc. that he (appellant No. 2) received goods cleared by appellant No. 1 from Cargo through fictitious TR claims and delivered the goods to different persons under direction of appellant No. 1; that he used to hire tempos for making deliveries which were mainly to Ghaffar Market; that on 5.2.1994, the goods seized were being carried to be delivered to one Shri Ram of New Moti Nagar, Near Milan Cinema, that goods actually belonged to appellant No. 1 who used to make payments to Dr. Goel and Noora at Dubai through hawala and otherwise.

5. Appellant No. 2 has also deposed that he used to contact various passengers lodged in various hotels as directed by appellant No. 1 mainly in Naaz Hotel, Taj Hotel and Batra Guest House.

6. The appellant No. 3 has stated that she knew appellant No. 1 for the past two to three years; that she was providing house and telephone facility to him (appellant No. 1) and assisting him in his illegal work relating to smuggling of goods to Air Cargo for which the appellant had been compensating her by providing basic facilities; that appellant No.1 had connection with Dr. Goel of Dubai; that she had stored smuggled goods at her house and that appellant No. 1 had kept some passports and baggage receipts at her residence; that these documents were taken into possession by the Customs officers; that appellant No. 1 used to go abroad on business and he used to telephone her from abroad at her residence and that she used to receive calls from Dubai for appellant No. 1; she also stated that she overheard appellant No. 1 telling Dr.

Goel that he would send the money by hawala.

7. Shri Janender Kumar Jain who was the occupant of Maruti Car No. DNA 1992 which was seized on 5.2.1994 in Rohini, has stated that he knew appellant No. 1 and 2; that he knew that appellant No. 1 was dealing in illegal acquisition of goods of foreign origin; that appellant No. 1 used to clear them through passengers claiming TR concessions; that goods actually used to be sent to India by Dr. Goel of Dubai; that he knew that appellant No. 1 used to pay Dr. Goel for the goods either through hawala or through cash and appellant No. 1 was using Car No.DNA 1992 for transporting smuggled goods. The involvement of appellant No. 1 is also

brought out from the statement of Shri Sanjiv Sarin who was present near Tempo No. DDL-3701 in Rohini at the time of its interception as he has stated that the four refrigerators and 65 blankets of foreign origin, seized from that tempo, actually belonged to appellant No. 1 and that about two hours before the seizure, the appellant No. 1 had telephoned him at his residence and instructed to despatch these goods to his (appellant No. 1) residence.

8. The statement of Shri Rajiv Solanki further brings out the role played by appellant No. 1. Shri Solanki stated that he was engaged in repair of electronic goods as well as in sale and purchase of foreign goods; that about one month back, appellant No. 1 came to his shop No.155, Ghaffar Market, New Delhi and told him that he could provide all kinds of foreign goods; that he ordered certain goods from appellant No. 1 which were delivered to him; that he ordered for three foreign origin vacuum cleaners which were supposed to be delivered to him on 5.2.1994; that appellant No. 1 told him that he would bring these goods from Dubai and clear them under TR and sell them later; that appellant No. 1 told him that he had invested his own money in the purchase of such goods; that appellant No. 1 used to regularly bring loaded tempos of goods of foreign origin to Karolbagh market and sell them to shop keepers in the market; that appellant No. 1 also used to bring goods in Maruti Car No. DNA 1992.

9. The appellant No. 1 submitted affidavits from six persons who have stated that they were working in Dubai; that when they came back to India on transfer, they had brought certain household goods and cleared the same after payment of duty at the appropriate rate and sold some of the goods imported by them to him (Sh. Pawan Bansal).

10. We find that the Department issued summons to these persons but they came back undelivered with the postal remarks "Not known", "Unclaimed", "No such person resides at the said address" except in the case of Shri Krishna Sharma who appeared on 21.2.1994 and tendered his statement under Section 108 of the Customs Act 1962. He stated that he had gone to Saudi Arabia and Dubai three times and worked as a carpenter and he had come in contact with Noor Bhai of Dubai; that when Sh. Noor Bhai came to know that he was going to India, he

proposed that he (Sh. Krishna Sharma) could carry some of his goods to India and deliver the same to appellant No. 1; that Noor Bhai offered him a free ticket and told him that appellant No. 1 would give him Rs. 10,000/-; that in January 1994, he left Dubai for India carrying 5 kgs of gold given to him by Sh. Noor Bhai for giving to appellant No. 1; that when he reached New Delhi by Air India flight on 31.1.1994, appellant No. 1 and 2 met him at the airport and gave him US dollars for payment of Customs duty on the gold; that he cleared the 5 kg gold and handed over the same to appellant No. 1 and 2; that both appellant No. 1 and 2 met him in Hotel Naaz and told him that some more goods were coming from Dubai in his name and he should leave for his village after clearing the goods. He further stated that he cleared 100 kgs of silver belonging to appellant No. 1 on 2.2.1994 from the Air Cargo, New Delhi and handed it over to appellant No. 1; that on 4.2.1994, appellant No.1 and 2 took him to Air Cargo and he got released goods consisting of two air-conditioners, one colour TV and one VCR which had come in his name; he handed over the Customs duty receipt to appellant No. 1 who himself deposited the Customs duty; that after clearing the goods, he handed them over to appellant No. 1 who came to Hotel Naaz on the next day and gave him Rs. 10,000/- and he left for his home. He stated that all the goods which arrived in his name from Dubai actually belonged to appellant No. 1 who had given him the amounts for payment of Customs duty and after clearance, he handed over all the goods to Appellant No.1; that he had not paid any amount either for buying the goods in Dubai or for Customs duty; that all the goods were sent by Noor Bhai for appellant No. 1.

10. Shri Krishna Sharma sent a telegram retracting his statement; however, he was summoned on various dates for the purpose of furnishing of proof of despatch of telegram; but summons issued for 17.3.1994 and 29.3.1994 were returned undelivered 'unclaimed'. Therefore, it lends credence to the view that the telegram was not sent by Shri Krishna Sharma but by somebody else.

11. The Customs authorities have issued summons to certain other persons whose names were shown in the copies of duty paid receipts produced by appellant No. 1 to support his claim that he was a bona fide purchaser for value; but only two persons appeared, namely Shri Tejpal and Sh. Gurnam Chand and

almost all the other summons were returned undelivered. The statements of both Shri Tejpal and Sh. Gurnam Chand brings out that they were carriers of consumer durables from Dubai where they were working for appellant No. 1. Both of them stated that appellant No. 1 paid them for acting as carriers of goods from Dubai.

12. The above evidence clearly brings out that it is appellant No. 1 who was directly concerned with the smuggling of goods by master-minding the fraudulent import/smuggling in association with Dr.

Goel and Noor Bhai of Dubai who had lured poor innocent workers returning to India from Dubai to carry goods for appellant No. 1 and got them cleared on payment of duty by appellant No. 1 who took the goods after their clearance and sold them in the market and sent the payment for goods to Dr. Goel and Noor Bhai through illegal channels of hawala and otherwise. Therefore, the contention that the goods were legally imported under TR-6 claims/Baggage Rules by bona fide passengers and then purchased by appellant No. 1 is not tenable.

13. Appellant No. 3 has retracted her statement when she was produced before the Addl. Chief Metropolitan Magistrate, Patiala House Court; however, her original statement is in her own handwriting; it has not been proved to have been obtained under threat or duress and it contains details which are corroborated by others and hence is a piece of evidence which can be relied upon.

14. Contravention of Section 77 of the Customs Act, 1962 is established since goods have been fraudulently imported and declared as baggage by persons who are not owners of the goods (the passengers' role is only that of carriers). Section 79 of the Act which provides for exemption from duty to bona fide baggage subject to use for prescribed minimum period and subject to condition that it is for use of passenger or his family or is a bona fide gift or souvenir has also been flouted by appellant No. 1. Contravention of Rule 7 of the Baggage Rules, 1978 framed under Section 79 and in force up to 28.2.1994, is also established since the goods are not bona fide unaccompanied baggage of passengers but were carried by them on behalf of appellant No. 1.

Further the seized goods being in the nature of consumer goods, are covered by Negative List of Imports of Exim Policy 1992-97 and therefore, the provisions of Section 11 of the Customs Act and of the Exim Policy 1992-97 have rightly been invoked in the show cause notice.

The burden cast upon the Revenue in terms of Section 123 of the Customs Act, has also been discharged by the evidence in the form of various statements of concerned persons. Since the seized goods have been brought into India under false TR claims/Baggage Rules resulting in contravention of Sections 77 and 79 of the Act, they have rightly been held liable to confiscation under Section 111 of the Act and we accordingly uphold their confiscation.

15. Regarding 41 blankets seized from the residence of Smt. Meena Sarin and claimed by her (appellant No. 3), we find that the photocopies of duty paid baggage receipts produced in support of her contention that the blankets were purchased from Ghaffar market, related to a prior period i.e. December, 1993 to January 1994 and appear to be manipulated documents, since no cash memos/-invoices showing purchase from Ghaffar market, have been produced by her and therefore, we hold that the blankets are liable to confiscation.

16. The role of all the three appellants has already been clearly brought out in the earlier part of this order and hence penal action against them in terms of Section 112 of the Customs Act is sustainable.

Confiscation of Maruti car No. DNA 1992 is set aside in the absence of any evidence that it was being used to transport the goods seized in this case. The statement of Sh. Janender Kumar Jain who was inside the car at the time of its interception, that appellant No. 1 used to transport smuggled goods in this car is not sufficient for upholding its liability to confiscation in this case. In the result, we uphold the confiscation of the seized goods claimed by appellant No. 1 and 3, uphold the penalty imposed on all the three appellants but set aside the confiscation of Maruti car No. DNA 1992. The appeals are disposed of as above.