

Cc Vs. P.R. Kulkarni

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-25-2000

Reported in : (2000)(93)LC177Tri(Mum.)bai

Judge : S T Gowri

Appellant : Cc

Respondent : P.R. Kulkarni

Judgement :

1. By this appeal, the department seeks to question the finding of the Collector (Appeals), who in turn confirmed the findings of the Additional Collector that the respondent was not liable to penalty under Section 112 of the Act.
2. The notice issued to the respondent proposed imposition of penalty on the ground that, while working as a Custom officer in the clearance of passengers at Sahar Airport, he colluded in clearing gold approximately weighing 466.6 gms each imported by five passengers. The Additional Collector, who adjudicated on the notice issued to the appellant, these passengers and other persons who were alleged to be involved in the importation, found that there was no evidence that the respondent was to help the passengers by going out of his way; or that he had allowed the clearance knowing that the gold was concealed in the brief cases of the passengers. Appropriate duty had been charged on the baggages brought by the passengers. He therefore exonerated this respondent and on an application by the department the Collector (Appeals) declined to interfere with that order and

hence the matter is before the Tribunal.

3. The ground in the application that all the five passengers stated, in the presence of witnesses, that they were asked by Rajubhai who delivered the goods in Singapore to wait for clearance by PR Kulkarni is not substantiated. In fact, even the notice issued to the respondent was not produced by either side strangely enough.

4. The contentions in grounds (4) to (11) are, to put it mildly, totally wrong. None of the persons named in these grounds has specifically named the respondent. Ramesh Kolety, who had come to receive the passengers, does not refer to any Custom Officer having cleared the passengers. Satish Kumar Patel, who also had come to receive the passengers with Kolety again mentioned Kulkarni twice.

Bipin Hariyani refers to TP Kulkarni, Custom officer and elsewhere refers to TP Kulkarni and Kulkarni. He says that he asked the officer whether he was TP Kulkarni and the officer noded in the affirmative. He repeatedly uses the word "TP Kulkarni". Feroz Ayub Khan refers to Custom officer Kulkarni had come on duty at No. 37. Vinay Vijay Pathare, one of the passengers refers again to Kulkarni. Dilip Kolamkar, another passenger, does not name any Custom Officer. It would therefore be entirely incorrect, as alleged in the grounds of the application that each of these person named PR Kulkarni by name.

5. It is reasonable to expect that minimum care and attention should be taken in drafting such appeals and misleading averments are not made therein.

6. It would follow that there is thus insufficient ground to justify interference with the Collector (Appeals) order.

7. There are in addition other aspects. None of the passengers, other persons interrogated and the material before us not indicates on what basis the respondent was to identify the passengers to whom he was supposed to favour. None of the passengers, except Hariyani, says that he identified himself to Kulkarni by name or by any other reference which would lead the officer to believe that the passenger to be given preferential treatment. Hariyani alone says that he introduced himself

to Kulkarni as Govindbhai Patel's man, Patel and Kulkarni were apparently behind the racket, did not say that they told the respondent to clear any particular person or persons; nor is there any suggestion that anybody else did so.

8. There are certainly angles to the case that are suspicious and required deeper investigation. It is not in dispute that the five passengers arrived from Singapore by Lufthansa flight at 1.30 a.m. on 17.1.1986 and waited till after 7.00 a.m. It is not clear why they should not wait for 6V2 hours for clearance; why all of them who admittedly brought baggages at the instance of Patel and Kolambkar should have chosen to come to a particular officer; why all of them should wait for six hours for clearance, is another. The third point is, how these six passengers who were roaming in the baggage hall for six hours were not spotted by any supervisory officers. None of these appears to have been investigated.

9. While I would not comment on the quality of the investigation, the fact that the department has chosen to appeal single mindedly in two stages, makes such a remarks necessary. If the department felt that the matter was of such significance to pursue the matter, at least it should have ensured that the matter was properly investigated and to specifically bring home of the respondent if he was guilty or exonerate him if he was not guilty and put an end to the matter once for all. The respondent has been responding to appeals at three stages. It was essential for the department once an order was passed by the Additional Collector exonerating the respondent to think twice before filing an appeal and this was even more necessary when the Collector (Appeals) confirmed the Additional Collector's order. With the hope that these observations will be taken note of at least to avoid future litigation in similar cases, I dismiss the appeal.

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