

Pradhan Singh Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-16-1983

Reported in : (1983)LC490DTri(Delhi)

Appellant : Pradhan Singh

Respondent : Collector of Customs

Judgement :

1. This matter originally was a revision petition which has been transferred to the Appellate Tribunal and is taken up as an appeal for consideration.

2. On behalf of the Appellant, the learned Counsel reiterated the points raised in the appeal and stressed that there is no evidence against the Appellant beyond the statement of Shri Gurbachan Singh, in which he mentioned that the seized watches were intended for the Appellant. He submitted that even this statement was later retraced.

Therefore, it is of no value at all to the Department. He further submitted that as a follow-up of the seizure of the watches, the Appellant's house was searched and no incriminating documents were recovered therefrom. The learned Counsel submitted that in respect of the statement of the co-accused on which the Department seeks to rely on, there are judicial pronouncements according to which unless there is other corroborative evidence, one cannot be convicted on the sole confession of such co-accused. He cited AIR 1977 SC 1579 in this regard. He also submitted that the Department did not prosecute the Appellant

though they prosecuted Shri Gurbachan Singh, the other party involved in this matter.

3. The Departmental Representative submitted that retraction of Shri Gurbachan Singh's statement took place more than 1 year and 4 months after his initial deposition. He also pointed out that in the course of cross-examination the witnesses reiterated that at the time of initial seizure Gurbachan Singh insisted that the watches belonged to the Appellant.

5. It cannot be disputed that these proceedings are quasi-criminal in nature. Shri Gurbachan Singh's statement, which is, in essence, much the same as the confession of a co-accused is not only self-exculpatory but requires to be corroborated in material particulars. There is not an iota of such evidence. A search of the Appellant's residential and business premises did not reveal anything to support the story of Shri Gurbachan Singh. Significantly enough, it would appear that Shri Gurbachan Singh alone was prosecuted and convicted. If his statement were correct, it is incomprehensible as to why the Appellant was not also prosecuted.

6. The entire statement of Shri Gurbachan Singh at best creates a strong suspicion against the Appellant but such suspicion cannot take place of evidence.

7. Therefore, we hold that the imposition of penalty on the Appellant under Section 112 is not warranted by law and, therefore, set aside the penalty and allow the appeal.

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