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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-09-2000

Reported in : (2000)(122)ELT903TriDel

Appellant : Satish Kumar

Respondent : Commissioner of Customs

Judgement :

1. The brief facts of the case are that acting on a specific information that a passenger named Shri Bahadur Singh travelling on Air India Flight No. Al-302 would receive foreign currency from Shri Satish Kumar, Air India Operations Assistant, on board the said flight for smuggling the same out of India, the DRI officers kept a surveillance in the aircraft which had arrived at IGI Airport, New Delhi from Bombay on 27.08.96. The officers noticed that Shri Satish Kumar entered the aircraft and met Shri Bahadur Singh in the aisle of the aircraft and when Shri Satish Kumar was handing over four small packets to Shri Bahadur Singh, both of them were intercepted inside the aircraft. Both admitted that the packets contained foreign currency which was to be taken out of India in the flight by Sh. Bahadur Singh. Both the appellants were escorted to the Preventive room of Customs, Air Intelligence Unit for personal search in the presence of two independent witnesses. The packets were opened and each packet contained 27 numbers of Deustche marks of 1000 denomination, totalling 1,08,000 Deutsche Marks (equal to Rs. 24,46,2007 in Indian currency).

Neither of the appellants could produce any documents to prove the lawful acquisition, possession, transportation of the recovered currency. Hence foreign currency was seized by the Customs officers.

2. Statement of Shri Satish Kumar was recorded on 28.08.96 wherein he admitted his involvement with the attempt to smuggle the currency out of India. He further stated that Shri Bahadur Singh was going from Bombay to Singapore by Air India flight AI-302; that as an employee of Air India, he is entitled to free trips abroad and two passes at 90% concession in one year; that during one of his visits to Singapore and Hongkong, he met one Shri Kulbir Singh at Singapore who told him that he could earn heavy profit if he handed over foreign currency to his (Sh. Kulbir Singh) representative on board Air India flight; that he met Shri Bahadur Singh at the shop of Sh. Kulbir Singh at Singapore.

Sh. Kulbir Singh told him that Sh. Bahadur Singh is the man to whom the foreign currency is to be handed over; that on 26.08.96, another representative of Shri Kulbir Singh met him in Tilak Nagar, New Delhi and handed over four packets containing foreign currency as well as Rs. 5,000/- as commission for this work; that he had on earlier occasions also handed over packets to Shri Bahadur Singh on the Air India flight.

3. Shri Bahadur Singh also admitted the recovery of foreign currency and admitted his involvement in the attempt to smuggle the same out of India. He gave details of his previous visits to Bangkok and Singapore and admitted that Shri Kulbir Singh used him for the purpose of smuggling foreign currency out of India. He also stated that he had met Shri Satish Kumar at the shop of Sh. Kulbir Singh in Singapore.

4. Based on the above, show cause notices were issued to both the appellants proposing confiscation of the seized currency (including Indian currency of Rs. 3100/- and Rs. 2150/- seized from Shri Bahadur Singh) on the ground of contravention of the relevant provisions of Foreign Exchange Regulation Act read with the Customs Act, and proposing imposition of penalty. The notice was adjudicated by the Commissioner who ordered absolute confiscation of the entire currency seized and imposed a personal penalty of Rs. 5 lakhs each upon the

appellants. Hence these appeals against penal action. Neither appellant claims the seized currency.

5. We have heard Shri Harbans Singh, learned Counsel for Shri Satish Kumar and Shri Inderjeet Singh Kapoor, learned Counsel for Shri Bahadur Singh.

6. The appellants dispute the recovery of the currency on the ground that even though a number of passengers and crew members were available in the aircraft, there was no reason why they were not made witnesses and instead Air India employees were made witnesses to the recovery; that the aircraft entry register does not contain the name of the Seizing officer and therefore, he could not have intercepted the noticees or was a witness to their interception inside the aircraft; that the panchnama clearly states that the panchas Shri H.B. Thapa, Assistant Security officer and Shri Chandan Singh, Air India security, were called by DRI officers to the Preventive room of the Air India Unit where the DRI officers told them that Shri Satish Kumar and Shri Bahadur Singh were intercepted when Shri Satish Kumar was in the process of handing over four small packets to Shri Bahadur Singh. We note that the name of Shri H.B. Thapa is shown in the aircraft entry register which is proof that he was in the aircraft at the time of interception and that the name of Shri M.K. Sherwani, Asstt Director is also mentioned in the said register which establishes that Shri Sherwani was in the aircraft at the time of interception and recovery.

7. As for the fact that the Seizing officer Shri Meena's name was not found in the Aircraft Entry register on 27.08.96, since the register is being maintained by the security staff of Air India posted at the Entry gate, a lapse on the part of the officer making the entry in not entering the name of Shri Meena does not lead to the conclusion that Shri Meena was not in the Aircraft or that he did not intercept the appellants. The register also shows that against the entry of DRI officers indicated therein, Number five is written; that security staff had noted that five officers had entered the aircraft. During the cross examination also, the officers deposed that five DRI officers had entered the aircraft. Therefore, the challenge to the presence of the Seizing officer in the Aircraft falls to the ground. Similarly the statement that recovery is doubtful since it was not witnessed by either passengers or crew

members on the flight is without substance since the DRI officers could not have either delayed the passengers of the flight or off loaded any passenger or crew members for the purpose of acting as witness to the recovery and there is no bar to making Air India employees as witness to the recovery and the Air India employee Shri Thapa was definitely in the aircraft at the time of recovery, as seen from the entry of his name in the Aircraft Entry register. In view of the above, we see no force in the submission of the appellants that the currency was planted.

8. The appellants allege manupulation of the Aircraft Entry register since the persons who had entered prior to the DRI officers into the aircraft, had shown entry time later than that of DRI officers.

9. We have perused the relevant extract of the above register. We find that the time of entry of DRI officers has been shown as 1705 hrs. The Panch witness Shri H.B. Thapa who had entered the aircraft alongwith the DRI officers, has also shown the time of his entry as 1705 hrs and subsequent to this, Shri Satish Kumar (appellant No. 1) has shown the time of his entry as 1710 hrs. It is the normal practice to indicate the time as per one's own watch and it is not necessary that the watches worn by different persons in the aircraft should be synchronized so as to show the same time. A small difference of five minutes in different watches is not so material as to have any bearing upon this case. We therefore, over-rule the objection raised about the Aircraft Entry register.

10. The next challenge is to the voluntary nature of the statements of both the appellants. It is the submission of the learned Counsel that both the appellants were coerced into giving their statements and that the medical examination report is clear evidence of duress by the DRI officers.

11. We have gone through the common report of medical examination carried out on both the appellants, under orders of the Court, when the appellants were produced in Court on 29.08.96. Nature of the injuries found does not suggest any beating. The report only suggests tenderness, which is not proof of beating, because there are several reasons and causes for tenderness. We see no truth in the submissions of the appellants that their confession was the result of coercion or duress by the DRI officers. The statements of Shri Bahadur Singh are full

details of smuggling activities; how he became acquainted with Shri Kulbir Singh at Singapore; that he had smuggled different foreign currencies to Singapore on three occasions earlier; that he had met Shri Satish Kumar at the shop of Kulbir Singh at Singapore, etc. His statement is corroborated by Shri Satish Kumar. Similarly Sh. Satish Kumar's detailed submission is corroborated by Shri Bahadur Singh and further the records of M/s. Janta Travels Pvt. Ltd., Jalandhar corroborates the statement of Sh. Bahadur Singh regarding his earlier trips to Singapore. Although the appellants have retracted their statements, the retraction does not detract from their statements in any way and the evidenciary value of their statements is not diluted in any manner whatever.Surjit Singh Chhabra v. Union of India AIR 1997 SC 2561] that a confession, though retracted, is an admission and is binding upon the person's immediate confession.

13. The case law relied upon by the learned Counsel namely, the decision of the Hon'ble Bombay High Court in the case of Ndukwe Onuohe v. Assistant Commissioner of Customs [1998 (101) E.L.T. 17 (Bom.)] and in the case of D. Uttam Chand v. C.C.E. [1995 (79) E.L.T. 588]; Charanjit Kumar v. C.C. Allahabad 1998 (29) RLT 578]; K.I. Pavunny v.Asst. Commissioner 1997 (18) RLT 641 (SC)] are distinguishable since we have held that the statements of both the appellants were voluntary in nature and were not obtained as a result of force or coercion. We are of the view that evidence on record is sufficient to hold that the appellants were concerned in carrying/concealing/keeping/transporting/dealing with foreign, currency knowing it to be liable to confiscation under Section 113(d) of the Customs Act, 1962; and thus the appellants were liable to penalty under Section 114(1) of the Act. The Department has discharged the burden of proving that the appellants were involved in the smuggling of foreign currency out of India. Hence, we uphold the imposition of penalty.

However, having regard to the totality of the facts and circumstances of the case and also noting the submission that Shri Satish Kumar was suspended from service w.e.f. 25.08.96 and has been subsisting on suspension allowance and also noting the financial position of Shri Bahadur Singh, we reduce the penalty to Rs. one lakh on each appellant.

The appeals are thus partly allowed.