

Virendra Kumar Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-30-1986

Reported in : (1986)(8)LC450Tri(Delhi)

Appellant : Virendra Kumar

Respondent : Collector of Central Excise

Judgement :

1. This appeal is directed against the Order-in-Appeal No. 131-Allh/82 dated 7/16-12-1982 confirming the Order-in-Original No.19-CUS(32/78)/80 dated 16-4-1980 passed by the Assistant Collector of Customs, Lucknow but reducing the amount of penalty from Rs. 2,000/- to Rs. 1,000/- only.

2. Brief facts of the case so far relevant for the purpose of this appeal are that on 9-4-1978 the Customs Officer, Pallia recovered the contraband goods from Ambassador Car No. UPU 3781 while it was coming from Dhangarhi (Nepal) near Chandpur forest Kothi in which the appellant along with S/Shri Kali Charan and Om Prakash were travelling.

During the course of checking of the said car, 39 Electronic Calculators and 4.95 Mts. of synthetic fabrics of foreign origin were recovered from a leather bag concealed in the said car which was claimed by the said Kali Charan. On personal search of the appellant, one Seiko Wrist watch of foreign origin was also recovered. The said car was seized by the Customs Officer along with the above goods under reasonable belief that the said car belongs to the appellant and it was

used by Shri Kali Charan as means of transport in smuggling of the aforesaid goods with his full knowledge and connivance and also on the reasonable belief that the recovered goods were smuggled into India from Nepal by the said car in violation of Govt. of India Notification No. 76 F.No. 80/83 LCI/65, dated 19-6-1965 issued under Section 11 of the Customs Act, 1962. As a follow up action, a show cause notice was issued to the appellant to show cause as to why the goods and car should not be confiscated under Section 115 of the Customs Act, 1962 and why penalty be not imposed upon him under Section 112 and 117 of the Customs Act, 1962, to which the appellant replied that he was not the owner of the car on the date of seizure. He further pleaded that neither any contraband goods were recovered from him nor he was in any way connected with any seizure. However, he requested that seized gold Seiko wrist watch belongs to him and it be released to him. During the adjudicating proceedings, the appellant also produced the copy of the registration certificate relating to the said vehicle attested by the Registration Authority, Agra, to support his contention that he. was not the owner of the vehicle in question. The Adjudicating Authority after usual enquiry ordered for the confiscation of the vehicle and wrist watch in question and also imposed a personal penalty of Rs. 2,000/- on the appellant. From the impugned Order-in-Appeal, I also observe that adjudicating proceedings were also initiated against Kali Charan and Kailash Chand Shivhare and the contraband goods recovered, was confiscated and the penalty was also imposed on them.

3. Being aggrieved, the appellant chased the matter in appeal before the Collector of Customs (Appeals), New Delhi, but without success except that the personal penalty was reduced from Rs. 2,000/- to Rs. 1,000/-. Against this Order-in-Appeal, the appellant has filed the present appeal.

4. I have heard Shri P.N. Kaul, Advocate for the appellant and Shri Rakesh Bhatia, learned SDR for the respondent.

5. Shri P.N. Kaul, learned counsel for the appellant contended before me that at the relevant time the appellant borrowed the said Ambassador car from his friend for taking his mother on pilgrimage. But due to the illness of his mother, she could not go and therefore the appellant with his friend Shri Om Prakash left on

pilgrimage, Agra in the Ambassador car in question, which was driven by Shri Kailash Chand Shivhare. On 9-4-1978 when the appellant was going to Pallia in the said car, one Shri Kali Charan was also accommodated in the vehicle on being asked for lift. On reaching at Chandpur, local Customs Officer stopped the vehicle and on search seized the foreign goods from the leather bag of the said Kali Charan. He further contended that though at the relevant time, the appellant was not the owner of the said vehicle but when the owner of the car came to know about the involvement of the vehicle in question, he declined to take it back and forced the appellant to buy the same and pay the price of the vehicle outright and therefore the appellant was forced to buy the vehicle from his friend during the pendency of the adjudicating proceedings and got the same registered in his name from the Transport Authority. On the said premises, Shri Kaul contended that at the relevant time the appellant was not the owner of the said vehicle and it is how the subsequent circumstances made him the owner of the car subsequently.

From the record, I observe that both the authorities below relying upon the statement of the appellant as well as the statement of the said Kali Charan, have held that at the relevant time the appellant was the real owner of the vehicle in question. In the statement recorded at the time of seizure of contraband goods and the vehicle in question, the appellant had clearly stated that he was the owner of the said vehicle and this was amply corroborated by S/Shri Kali Charan, Om Prakash and Kailash Chand Shivhare in their statements which were also recorded simultaneously. The letter purporting to be issued by the Registration Authority, Agra and produced by the appellant to show that on 9-4-1978 the vehicle in question was not registered in the name of the appellant is also of no relevance. For, it is common knowledge that there is always a time gap between sale transactions and the transfer of the vehicle to the purchaser by the registering authorities. Thus, from the facts available in the present case it is difficult to conclude that at the relevant time the appellant was not the owner of the vehicle in question. It is interesting to note that if the appellant was not the owner of the vehicle in question on the date of the seizure, he has no right to complain against the confiscation of the said vehicle before me, in terms of Section 115(2) of the Customs Act as it speaks of owner only. But it appears that since the vehicle now stands confiscated and the appellant wants it to be released to him, he has come

out with the submission that now he has become the owner of the vehicle because after the initiation of the confiscation proceedings by the Customs Authorities, his friend insisted him to take back the vehicle and forced him to purchase the same. In my opinion the subsequent development as alleged by the counsel for the appellant also does not change the complex of the case. For, it is admitted to the appellant in his statement recorded at the time of seizure of car and contraband goods that he was accompanied by S/Shri Kailash Chand Shivhare and his friend Om Prakash when he went to Dhangarhi in the said car and that Kali Charan who was his friend met him in Dhangarhi and that the said Kali Charan had one bag in his possession from which contraband goods were recovered. Under these circumstances, it is difficult to conclude that the appellant was not conscious that his car was used for smuggling contraband goods. To sum up conceding for argument's sake that the appellant was not owner of the vehicle in question at the relevant time, the car is still liable to be confiscated under Section 115 of the Customs Act because it is admitted that to the appellant that he was in-charge of the vehicle in question at the relevant time and the said Kali Charan who was travelling with him had one bag in his possession from which contraband goods were recovered. If he was not the owner of the vehicle at the relevant time he has no cause to complain regarding the confiscation and if he has acquired ownership of the vehicle in question during the adjudicating proceedings, his case does not improve because the fact remains that the contraband goods were recovered from the said car and the appellant was incharge of it and it was used to carry the contraband goods with the knowledge of the appellant.

6. As regards the contention of the learned counsel for the appellant that the wrist watch recovered from the appellant is not liable to be confiscated, it would suffice to say that the recovered wrist watch is admittedly a notified item under Section 11B of the Customs Act and there is no evidence to prove that the appellant had taken the precaution that it was not smuggled while acquiring the said watch as stipulated under Section 11B of the said Act. There is nothing on the record to support the contention of the appellant that the said watch was gifted to him.

7. As regards the quantum of penalty, it would again suffice to say that the Collector of Customs (Appeals) has already reduced the amount from Rs. 2,000/-

to Rs. 1,000/-. Coupled with the fact that there is evidence on the record that the appellant was also apprehended on 19-6-1978 while travelling in the car in question along with S/Shri Om Prakash and Mahendra Kumar and contraband goods worth Rs. 73,954/- were recovered from the car. This only confirms that the appellant was actively engaged in smuggling of contraband goods from Nepal to India.

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