Anil Agarwal Vs. Commissioner of Customs,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-10-2002

Reported in : (2002)(141)ELT185TriDel

Judge : P Bajaj

Appellant : Anil Agarwal

Respondent : Commissioner of Customs,

Judgement :

1. This appeal has been filed by the appellants against the impugned Order-in-Original dated 26-12-1997 passed by the Commissioner of Customs vide which he had ordered the confiscation of 6 gold biscuits valued at Rs. 3,25,425.60, foreign currency equivalent to Indian Rs. 51,05,230/- under Section 111(d) of the Customs Act, Indian currency of Rs. 7,80,900/- under Section 121 of the Customs Act, two attachie cases valued at Rs. 400/- under Section 119 of the Act and also imposed personal penalty of Rs. 5,00,000/- on the appellant.

2. The facts leading to the filing of the present appeal may briefly be stated as under: - On 29-3-1995, Officers of Customs Staff, Ludhiana with the aid of the Punjab Police carried out the search of residential premises of the appellant bearing property tax No. 200, Bharat Nagar, Ludhiana in the presence of two independent witnesses. The search resulted in recovery of six gold biscuits of foreign markings, foreign currency 69949 U.S. Dollars, 28700 U.S. Ponds, 30214 Canadian Dollars, 32.550 Deutche Mark and 4700 Saudi Rial and Indian currency

Rs. 7,80,900/-.

The appellant, in his statement, admitted this recovery from his house but could not produce any documentary evidence to prove his legal possession/acquisition of the recovered items. He also admitted that he was dealing in the contraband goods for the last four months and used to sell gold biscuits directly to some jewellers and sometimes through broker Toti. He also admitted the purchase of foreign currency from Shri Dev of Barsati Bazar and Subash of Rajkot Road, Mullanpur. The elder brother of the appellant, Ashok Kumar in his statement also disclosed that because of illegal activities of the appellant, he was finding it difficult to carry on partnership concern M/s. Monalisa Jewellers with him and that partnership was dissolved vide Dissolution Deed dated 16-3-1995 and the appellant ceased to be a partner with him since that date.

The appellant was called upon to show cause as to why the recovered items including money be not confiscated and penalty be not imposed on him. Thereafter the appellant requested for cross-examination of the witnesses and the same was allowed to him through the counsel.

On completion of the proceedings, the Commissioner passed the impugned order appealed against, detailed above.

3. The learned Counsel has challenged the impugned order of the Commissioner mainly on three grounds namely (i) recovery of gold biscuits and foreign currency from the premises bearing property tax No. 200, Bharat Nagar, Ludhiana, did not stand proved from the evidence on record, (ii) the confessional statement of the appellant was inadmissible especially when he retracted the same later on and (iii) panchnama witnesses namely Dharam Pal Verma and Balraj Gupta did not support the case of the Revenue.

4. On the other hand, learned JDR has reiterated the correctness of the impugned order of the Commissioner.

6. Admittedly, property bearing house No. 200, Bharat Nagar, Ludhiana belongs to the appellant and at the time of recovery, he was in possession of the same. The

perusal of the panchnama which was prepared at the spot and attested by Dharam Pal Verma, Balraj Gupta, Gurmail Singh, S. I., Paramjit Singh, DSP and Mr. Vashist, Superintendent (Customs), shows, that the recovery of contraband including foreign currency was effected from the premises in possession of the appellant.

The fact that Dharam Pal Verma and Balraj Gupta later on denied the recovery from that premises and averred that recovery was effected from house No. 195, Bharat Nagar, Ludhiana which was possessed by Ashok Kumar, is immaterial. They appeared to had been won over by the appellant later on. From the evidence of Gurmail Singh, S. I. and Paramjit Singh, DSP, the recovery of contraband goods from the premises of the appellant bearing house No. 200, Bharat Nagar, stands amply proved. There exists no cogent reason to disbelieve their evidence.

Their official status did not render their evidence inadmissible. There is nothing on record to suggest if they had any motive or personal axe to grind, in implicating the appellant falsely in the case, if the recovery had not taken place from his house No. 200 but from house No.195, of Ashok Kumar. The absence of corroboration to their evidence by the independent witnesses named above, also did not affect the credibility and admissibitity of their evidence. It is a matter of common knowledge that these days public witnesses hardly come forward to support the case of the prosecution. They invariably later on join hands with the culprit/criminal. That being so, for want of corroboration by the public witnesses, the evidence, of the police officials, the prosecution case cannot be thrown over board, especially when under the law such a corroboration is not mandatory. Therefore, failure on the part of the public witnesses, named above, to corroborate the evidence of the official witnesses, cannot be allowed to be capitalised by the appellants. The evidence of the official witnesses, named above, inspires confidence and had been rightly accepted by the Commissioner against the appellant.

7. Apart from this, there is no reliable evidence on the record to prove that recovery of contraband including foreign currency took place from House No. 195, Bharat Nagar, owned and possessed by Ashok Kumar.

The said Ashok Kumar has not come forward to own the recovery and there is nothing on the record to prove if customs and police officials, had any motive to iet off said Ashok Kumar if the recovery had actually taken place from his house. The affidavit of Raj Rani placed on record by the appellant does not advance his plea. She has only deposed that she rented out a portion of house No. 195 to a tenant by the name of Ashok Kumar and at the time of visit by the Customs and Police officers, Ashok Kumar was not present and his portion was lying locked and that on enquiry, she told them Ashok Kumar's real brother Anil Kumar (appellant) was residing in nearby house No. 200. She has nowhere deposed that nothing was recovered in her presence from the house of the appellant. Hardyal Singh in his affidavit has simply stated that on 29-3-95 customs land police officials called him to house No. 195, Bharat Nagar at 12 o'clock noon and after breaking lock of that house made recovery of gold biscuits and currency but his affidavit can be safely said to have been procured by the appellant. He has not given details of the recovery effected from that house. No document bears his attestation as a witness and he has not disclosed as to why he did not put his attestation. Therefore, no credence can be attached to his affidavit. Rajeev Aggarwal is son of Ashok Kumar and he has simply deposed that Ashok Kumar was occupying house No. 195, Bharat Nagar, as a tenant on a monthly rent of Rs. 300/-. He has denied his knowledge if his father was dealing in sale and purchase of gold biscuits of foreign origin. He has nowhere deposed about the recovery of any contraband from the house of his father. He has also nowhere testified about non-recovery of any contraband goods from house of Anil Kumar, appellant. Therefore, his affidavit is of no assistance to the appellant.

8. Besides this, the appellant admittedly in his confessional statement recorded at the spot admitted recovery of gold biscuits of foreign origin and foreign currency as detailed in the panchnama from his house. His statement has been rightly accepted and relied upon by the Commissioner. The argument of the counsel that the confessional statement was later on retracted by the appellant and the same having been recorded in the presence of the police officials was even otherwise inadmissible, cannot be accepted, keeping in view the facts and circumstances of the case. There is no material on record to suggest if any third degree method was applied for extracting the confessional statement from the appellant. He made

confessional statement at the spot immediately on the recovery of contraband and foreign currency from his house. He is also facing criminal prosecution on that account. The retraction of- the confessional statement was made by him during the criminal proceedings later on, after availing the services of the counsel as such, could safely be said to be an afterthought, motivated with the object to wrigle out of the criminal proceedings. From the mere presence of the police officials at the time of recording his statement, no such inference that the statement was procured from him under coercion, can be legally drawn. The statement was recorded by the customs officer and not by the police officers who accompanied the customs officials to facilitate the search of the premises of the appellant and to avoid any mishap during the search.

9. The ratio laid down in J.A. Naidu, etc. etc. v. State of Maharashtra -1983 (13) E.L.T. 1611 and Amba Lal v. Union of India and Ors. [1983 (13) E.L.T. 1321 (S.C.) = AIR 1961 S.C. 264], referred to by the counsel, during the course of argument, is not attracted to the present case. The observations in those cases about inadmissibility of the confessional statement recorded in the presence of the police officials, are not applicable in this case for want of any evidence to show that any third degree method was used against the appellant by the police officials who were only witnesses to the panchnama prepared at the spot regarding recovery of the contraband and foreign currency from the house of the appellant. The investigation was not carried out by them but by the customs officers.

10. From evidence and material on record, in my view, the recovery of six gold biscuits and foreign currency and Indian currency as detailed in the impugned order stands amply proved from the possession of the appel lant. The Commissioner of Customs has recorded the detailed reasons in support of the order and there exists no cogent reason to disagree with him, in view of what has been discussed above. Therefore, the impugned order passed by the Commissioner of Customs is perfectly valid and needs no interference.

11. Consequently, the impugned order of the Commissioner is up held and the appeal of the appellant being without merit is ordered to be dismissed.