Yusuf Kader Vs. Cc (P)

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-11-2002

Reported in : (2002)(104)LC875Tri(Mum.)bai

Judge : J Balasundaram

Appellant : Yusuf Kader

Respondent : Cc (P)

Judgement :

1. The brief facts of the case are that consequent to information gathered during investigation of customs seizure case of contraband goods such as wrist watches of foreign origin, textiles of foreign origin, miscellaneous goods of foreign origin, Indian currency and foreign currency valued at approximately Rs. 38 Lakhs along with mechanised vessel MFV Manek Prasad BLS-512 on 2/3.2.1981 and after the issue of show cause notices to the Tandel of the vessel and seven others on 25th July, 1981, DRI officers of Bombay Zonal Unit carried out further investigations. When the investigations were going on the Tandel of the vessel Shri Bhagwanbhai Channabhai was detained under COFEPOSA on 18.6.1981. The Tandel wrote several letters to the DRI stating that he would like to discuss certain important points in connection with his case. Therefore his further statements were recorded on 6/8th August, 1981 in which he named one Shakeel Ahmed, Shamshi Seth and Yusuf Batata (appellants herein) as persons to whom goods sent from Dubai and seized on board vessel Manek Prasad belonged.

He also identified the photograph of the appellant herein. Shri Jagatsingh Rawat who was a crewmember on board Manek Prasad and who was a co-noticee in the notice dated 25th July, 1981 also identified the photographs of the appellant. The appellant was apprehended on 4th September, 1981 in which he denied that he was known as Yusuf Batata but admitted that when he was apprehended by the officers of the Customs, he was accompanied by one Yunus Lobo, who identified him as Yusuf Kader and also as Yusuf Batata.

2. From the above investigations it appeared to the department that S/Shri Shamshi Shakeel Ahmed, Yusuf Kader alias Yusuf Batata, Yusuf V.P alias Yusuf Ibrahim Mohammed and Ishaq Khan, all of Mumbai were concerned with goods seized from vessel Manek Prasad and hence a show cause notice dated 28.12.1983 was issued to them proposing imposition of penalty under Section 112 of the Customs Act, 1962. The notice was adjudicated by the order dated 2.6.1986 by the Collector of Customs (Preventive), Bombay by which penalties of different amounts were imposed on Shri Shamsi, Shri Shakeel Ahmed and Shri Yusuf Kader. A penalty of Rs. 2.5 lakhs was imposed on Yusuf Kader. Aggrieved by this order the appellant herein preferred an appeal to the Tribunal and by order dated 1115/88 WRB dated 13.7.1988 the Tribunal set aside the order of penalty and remanded the case to the Collector afford an opportunity of personal hearing to the appellant. The relevant portion of the Tribunal is reproduced below.

We have considered the submissions made on both the sides and perused the available records. There is considerable force in the contention of Shri Mehta. In his order the Collector observed: In any case despite all this defence put forth by J.D. Ved, Advocate for Yusuf Kadar alias Yusuf Batata is decarded for, doing the adjudication proceedings he could not bring forth his client when he was asked to do so by me and my predecessor as well. His argument that since he has obtained authority for appearing on his behalf is not tenable.

5. In his order the Collector does not state that he required the presence of Yusuf Kadar alias Yusuf Batata for examining him. The order does not spell out the reasons as to why the presence of Yusuf Kadar alias Yusuf Batata (Present appellant) was required. The learned Collector having allowed the appellant being

represented by an advocate cannot refuse to consider his defence just because the learned advocate did not comply with his direction as to keeping presence of his client at adjudication. The law nowhere lays down that the party should be present during the adjudication. There is no provision in the Customs Act prohibiting the party being represented by his authorised agent. The procedure followed by the Collector is unknown to law and it has no sanction of law. The contention of Shri Mondal that the Collector had considered the defence of the appellant does not hold water since the Collector in unequivocal term has stated in his order that the defence put forth by the appellant's advocate was discarded for not keeping his client's presence when he was asked to do so by him as well as by his predecessor. Since the Collector had not considered the defence of the appellant, the penalty imposed on him is liable to be set aside.

6. In the result, we allow this appeal, set aside the order of penalty on the appellant and remand the matter to the Collector to afford a fresh opportunity of personal hearing of the appellant and thereafter to pass orders in accordance with law.

3. The present order has been passed after remand in which the same penalty has been imposed upon the appellant.

4. The appellant has filed a miscellaneous application for bringing on record copies of show cause notice issued in July, 1981 to seven crew members along with annexures, replies thereof and the adjudication order penalising the seven persons and notes of cross-examination of wit-nesses in those proceedings in which liability of the contraband seized and of the vessel to confiscation, penal liability of the Tandel and the crew members was adjudged. The prayer in the miscellaneous application is rejected in view of the fact that the Tandel of the vessel has subsequent to the issue of the first show cause notice in July, 1981, implicated the appellant and also identified him. No useful purpose will be served in calling for the record of earlier proceedings. Hence I reject the miscellaneous application.

5. I have heard the learned Counsel for the appellant, and Shri M.H.Shaikh and carefully considered the submissions. Evidence against the appellant consists of

the statement of the Tandel of the vessel and his identification by the Tandel and another crew member. After the lapse of three years from the date of recording the statement of the Tandel in August, 1981 when he implicated the appellant, the Tandel resiled from his original statement in this connection. The authorities below have clearly held that such change in stand is clearly nothing but an afterthought and cannot be treated as a retraction in the eye of law.

In the order dated 2.6.1986 the adjudicating authority has clearly brought out the involvement of the appellant in which he has noted that the statement of the Tandel was recorded at his instance and that too after receiving several letters addressed to the officers of the Directorate of Revenue Intelligence. In all the letters the Tandel has expressed his eagerness to voluntarily make complete and true disclosure regarding the persons concerned with the contraband seized from the vessel Manek Prasad. He has also stated that he did not name Shri Shamshi, Shri Shakeel Ahmed and Shri Yusuf Batata in his earlier statement out of fear for his life as he had been threatened that if he disclose the names of these three persons his life would be in danger.

The adjudicating authority has discussed in detail the identification of the appellant by both the Tandel and Shri Rawat who was a member of the crew of the vessel in question. No convincing argument has been put forth against the finding that the appellant was one of the consignees of the contraband.

6. Therefore I see no reason to interfere with the finding to his liability to penalty and hence I uphold the impugned order and reject the appeal.