

Mohamed Maroof Vs. Additional Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-05-1986

Reported in : (1987)(10)LC230Tri(Mum.)bai

Appellant : Mohamed Maroof

Respondent : Additional Collector of Customs

Advocate for Pet/Ap. : Shri. Shah

Judgement :

1. This appeal arises out of and is directed against the order bearing No. S/l4-4-115/82-83PB dated 30.11.1982 passed by the Additional Collector of Customs (Preventive), Bombay.
2. The subject matter of challenge in this appeal is the absolute confiscation of two TV sets, one VCR, 10 Video cassettes, two Video Rack, 2 cartons Acropal, 1 T.V. fal, 1 Gas stove, 2 Pampers, 3 Gripe water bottles and 2 takas Bosky textiles.
3. Shri Shah appearing for the appellant contended that the above items were sent by the appellant's son-in-law through some Haj passengers as gift items to the appellants. It was also urged by Shri Shah that during the relevant period Government of India had allowed the relatives abroad to send T.V. sets as gift and therefore no licence was required for importing the T.V. sets. Shri Shah further contended that other items were not prohibited goods and therefore the confiscation was bad. The further contention of Shri Shah was that the passenger

had made true declarations and therefore the Additional Collector committed an error in ordering confiscation. Shri Shah relied upon the provisions of Sections 77, 79 and 80 of the Customs Act. Incidentally Shri Shah submitted that when the goods are sent through passengers it is not necessary to state in the chit that they are being gifted. It has to be presumed. Shri Shah finally relied upon the decision of the Madras High Court reported in 1976 CR. L.3. 932 in support of his contention that the passenger commits no offence if he makes true declaration of what he had brought irrespective of the fact whether the goods could be passed on payment of duty or not.

4. Shri Senthivel, SDR, appearing for the Collector supported the order of the Collector for the reasons set out in the order and also on the ground that under the Baggage Rules, a passenger cannot bring goods worth more than Rs. 1250/- without licence. In that connection, Shri Senthivel also placed reliance on Sub-clause (g) of Clause 11 of Imports (Control) Order.

5. I have carefully considered the submissions made on both the sides.

Admittedly, the baggage items were not brought by the person to whom it belonged or to whom it was gifted. They were brought by another passenger to whom the baggage items did not belong. Practically it becomes an import by a passenger who had come to India from abroad. The contention of Shri Shah that the goods were gifted to the appellant by his son-in-law and that the goods were permitted during the relevant period cannot be accepted. The passenger who had brought the items had also produced a letter addressed to the appellant by his son-in-law. In this letter there is no indication that the items were sent as gifts.

His son-in-law had even informed the appellant that if he needs any money he would secure the money from one Shri Chasmuddin. The appellant was also questioned. The appellant stated that he had received a letter from his son-in-law in which he had written that he was sending one T.V. set along with a haj passenger by name Hakim Shah. The appellant produced that letter two days thereafter. The Additional Collector did not accept the genuineness of that letter. He has observed that in the chit there was no mention that he was sending T.V. sets as gifts.

Further, it would be difficult to accept that a person who sends 12 packages would state only two packages are gifts. Above apart he found that the letter produced do not tally with the earlier chit. He, therefore, did not accept the appellant's contention that two T.V. sets were sent as gifts. The appellant did not choose to produce the letter or copy thereof. In his earlier statement he had stated that he had received a letter from his son-in-law stating that one T.V. set would be sent. The letter produced disclosed that 2 T.V. sets were sent.

Having regard to this material discrepancy the Additional Collector was justified in holding that the letter produced during the personal hearing was not genuine.

6. Coming to the legal contention, Section 77 requires the owner of a baggage to declare the contents of the package to the proper officer.

Section 79 provides for exemption from payment of duty in respect of bona fide baggage. Admittedly, the passenger who brought the baggage is not the owner of the baggage. Therefore, any declaration which he had made cannot be considered as a declaration by the owner of the baggage and as such the provisions of Section 77 are not strictly attracted.

Section 79 speaks of bona fide baggage. Admittedly the baggage brought by a passenger is not his bona fide baggage. They are sent by a person who was staying abroad. Therefore, it cannot even be considered as baggage of the passenger. The other provision relied upon by Shri Shah is Section 80 which has no relevance. Firstly because the passenger who brought the baggage was not the owner of the baggage, secondly because it cannot be considered as baggage of the passenger and thirdly because the passenger did not make a request to detain these articles for the purpose of being returned to him for re-export.

7. Having regarding to my finding that the articles were not the baggage of the passenger, the decision relied upon by Shri Shah also will not apply. In the result and for the reasons stated above, this appeal fails and the same is rejected.