R. Ramose Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-10-1986

Reported in : (1987)(10)LC614Tri(Delhi)

Appellant : R. Ramose

Respondent : Collector of Customs

Judgement :
1. This appeal is directed against the order of the Collector of Customs (Appeals), Madras dated 31-1-1986 confirming the order of the Assistant Collector of Customs, Madras dated 23-7-1985 absolutely confiscating textiles under seizure in terms of Section 111(d) and (p) besides a penalty of Rs. 750/- under Section 112 of the Customs Act, 1962 (hereinafter referred to as the 'Act').

2. On 14-7-1985 at about 9.0C a.m. police officials attached to M.I.Police Station searched the appellant as he was found moving in a suspicious manner, and recovered textiles of foreign origin valued at Rs. 5,700/- (GIF). The police authorities effected seizure of the same on a reasonable belief that the goods were smuggled into India and later handed over the goods as well as the appellant to the Customs Department for further action under Customs Law.

3. The appellant gave a statement before the Customs Officers on 14-7-1985 inter alia admitting that the goods in question were purchased by him from unknown persons without any bills or vouchers. It is in these circumstances proceedings were instituted against the appellant which ultimately culminated in the present

impugned order now appealed against.

4. Shri Suganchand Jain, the learned counsel at the outset submitted that the impugned orders suffers from a legal infirmity inasmuch as the original adjudicating authority has invoked Section 123 of the Act against the appellant. It was urged that Section 123 of the Act is inapplicable in respect of seizure effected by the police authorities.

The learned counsel further urged that this legal question has not been considered by the Collector of Customs (Appeals), Madras under the impugned order.

5. Shri Krishnan, the learned DR., while fairly conceding the legal position with reference to the inapplicability of Section 123 of the Act, urged that this point was not raised before the authorities at all, much less pleaded before this Tribunal even in the grounds of appeal.

6. It is a fact that the plea with reference to the inapplicability of Section 123 of the Act has not been taken by the appellant at any time before authority and is raised for the first time before me, though not pleaded in the appeal grounds. This question being purely a question of law, notwithstanding the fact that the same has not been pleaded or raised before the authorities below, the same can be permitted to be urged before me. As rightly contended by the learned counsel for the appellant and as very fairly conceded by the- learned D.R., the statutory presumption under Section 123 of the Act is not applicable in respect of a seizure effected by the police In other words, if the goods in question were seized by the police, the law does not cast any burden of proof on the appellant to show that the goods were not smuggled goods in terms of Section 123 of the Act. This position of law is very well settled and is no res Integra. The Division Bench of the Gujarat High Court in the case of 'The Assistant Collector of Customs, Baroda v. Mukbujusein Ibrahim Pirjada' (reported in 1970 Cr. L.J. 1305) has held that if the seizure is effected by the Police authorities the presumption under Section 123 of the Act cannot be invoked. The Division Bench of the Gujarat High Court has adverted to the ruling of the Supreme Court in the case of 'Gian Chand and others v. State of Punjab' (reported in 1962 S.C. 496 - 1983 ELT 1365 (S.C.)] where Their Lordships of the Supreme Court interpreted identical corresponding provisions in

Section 178A of the Sea Customs Act, 1878. The Supreme Court has held that Section 178A of the Sea Customs Act, 1878 lays the burden of proving that the goods are not smuggled on "the person from whose possession the goods are taken". It is relevant to note in this context that Section 178A of the Sea Customs Act, 1878 is in pare materia with Section 123 of the Customs Act, 1962. The case dealt with by the Supreme Court as well as the Gujarat High Court related to the seizure of goods by the police officers at the initial stage. The Division Bench of the Madras High Court also has taken a similar view in the case of 'Bhoormal Premchand v. Collector of Customs Madras' in the ruling reported in AIR 1967 Madras 39 clearly holding that "a 'seizure' under the authority of law does involve a deprivation of possession and not merely of custody and so when the police officer seizes the goods, the accused loses possession which vests in the police. When that possession is transferred, by virtue of the provisions contained in Section 180, to the Customs authorities, there is no fresh seizure under the Sea Customs Act". The ratio decided of the aforesaid rulings is clear that Section 123 cannot be invoked against the appellant in the present case. I have also had occasion to deal with this question in certain earlier appeals before this Tribunal namely, in Customs Appeal Nos. 100, 101 and 194 of 1985 by judgment dated 4-8-1986. Therefore, the impugned order appealed against is set aside and the matter is remitted back for reconsideration by the original authority without applying the presumption under Section 123 of the Act against the appellant.