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Cc Vs. Shakeel Ahmad

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-06-2002

Reported in : (2003)(86)ECC478

Judge : P Chacko

Appellant : Cc

Respondent : Shakeel Ahmad

Judgement :

1. On 9.5.99, the respondent was intercepted at the Customs Barrier at Nepalganj Road on his way from Nepal to India, by officers of the Customs. 41 Indian currency notes of the denomination of Rs. 500 were recovered alongwith currency notes of lower denomination from his person and the same were seized by the officers believing that the currency notes of denomination of Rs. 500 were liable to confiscation under Section 111 (d) of the Customs Act. After recording a statement of the respondent under Section 107 of the Customs Act, the department booked a case against him and accordingly issued a show-cause notice to him for confiscating the currency notes and imposing penalty on him.

The original authority ordered absolute confiscation of the seized goods worth Rs. 20,500 (Rs. 500 x 41) and imposed on the appellant a personal penalty of Rs. 500 under Section 112 of the Customs Act. The appeal preferred by the party against the order of the original authority was allowed by the Commissioner (Appeals). Hence the present appeal of the Revenue.

3. Ld. Commissioner (Appeals) appears to have accepted to appellant's case that, at the Customs Barrier at which the impugned currency notes were seized, the stage for confiscation of the goods under Section 111 had not reached. The lower appellate authority, further, appears to have found it a fit case for exoneration on considerations such as (i) that the appellant was not a habitual offender (ii) that he was a small trader, and (Hi) that his declaration was voluntary and correct, and so forth. The main ground raised in this appeal of the Commissioner of Customs, at SI. No. 5 under 'Grounds of Appeal', is extracted below: "It is pertinent to mention that nowhere in the provision of Section 111 (d) is there a requirement that import of attempt to import should be unto the land Customs Station. Even otherwise the Customs barrier at Nepal Ganj Road is within the Land Customs Station.

Therefore, the import of attempt to import by Shri Shakeel Ahmad was at (he Customs barrier in the Land Customs Station Nepal Ganj Road and into India as provided under Section 111(d). The Commissioner (Appeals) has not appreciated the facts correctly as interception of goods was at the Customs barrier which was within the Land Customs Station. Since the Barrier is within the precincts of the Land Customs Stations and in India. Therefore, the import or attempt to import made by Shri Shakeel Ahmed to bring the 41, Rs. 500 denomination currency notes into India is a clear violation of Section 111 (d) of the Customs Act the currency notes were thus liable for confiscation." 5. Ld. Counsel for the respondent refers to the provisions of Section 125 of the Customs Act as well as to the definition of 'goods' under Section 2(22) of the Act and submits that an opportunity for redemption of the currency notes ought to have been granted by the adjudicating authority. Fairly enough, having regard to the categorical admission of the appellant in his statement given to the department under Section 107 of the Act, Ld. Counsel has not urged any serious argument on the confiscability of the currency notes. However, he has pleaded for vacating the penalty imposed on the appellant by the adjudicating authority.

6. I have examined the submissions. The view taken by the Commissioner (Appeals) that no stage for confiscation of the currency notes under Section 111 of the Customs Act had been reached at the Customs barrier at which the currency notes were seized by the officers of Customs, cannot be accepted. Admittedly, the

interception and seizure took place within the Indian territory. Again, admittedly, the currency notes were brought from Nepal. The prohibition against importation of Indian currency notes of denomination higher than Rs. 100, under Notification No. 81/89-R.B. issued under Section 13 of FERA 1973, is also not contested. By virtue of Section 68 of FERA 1973, any offence against such a prohibition was offence under Section 111 of the Customs Act at the material time. The case for confiscation of the currency notes under Section 111 (d) of the Customs Act is an admitted case insofar as the respondent is concerned. Ignorance of the provisions of law is no excuse in this behalf. Ld. Commissioner (Appeals) in his order appears to have given a go-by to this basic tenet of law by holding the view that the appellant did not know that Indian currency notes of Rs. 500 denomination were subject to a prohibition. Therefore, I hold that the currency notes were liable to confiscation under Section 111 (d) of the Customs Act.

7. The question now arises as to whether the notes were liable to absolute confiscation and, if not, whether an opportunity for redemption has to be granted at this stage. When the appellant preferred appeal against the order of the original authority to the Commissioner (Appeals), he did not stake a claim for redemption. In the present appeal filed by the Revenue, there is no cross appeal of the respondent. Ld. Counsel has attempted to make out a case that it was mandatory for the original authority to grant an opportunity of redemption of the confiscated currency under Section 125 of the Customs Act. According to Ld. Counsel, that opportunity ought to have been given without being asked for. I am not inclined to accept this submission. Even if it be assumed that it was a statutory obligation of the original authority to grant an opportunity of redeeming the goods on payment of a fine under Section 125, it was upto the owner of the goods to assert and exercise his right to such a redemption. The appellant did not choose to do so either at the first appellate stage or at the present stage. Any statutory right, unlike a fundamental right under Part-Ill of the Constitution of India, is a right which could be waived. The present which has already been waived by the respondent, cannot be retrieved at this stage. In the result, the order of the original authority absolutely confiscating the currency cannot be interfered with.

8. In the present appeal of the Commissioner of Customs, there is no specific challenge insofar as the penalty is concerned. The appellant appears to have no case that a penalty ought to have been imposed on the party under Section 112 of the Customs Act. Keeping this in view, the penalty of Rs. 500 imposed by the original authority is set aside.

9. In the result, the order of the Commissioner (Appeals) is set aside and the order of the original authority is restored except in respect of the penalty. The appeal is allowed to the above extent.

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