

Kamal Kishore Agarwal and ors. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-30-2002

Reported in : (2003)(87)ECC198

Judge : A T V.K.

Appellant : Kamal Kishore Agarwal and ors.

Respondent : Cce

Judgement :

1. In these five appeals, arising out of a Common Adjudication Order No. 26/2001, passed by the Commissioner of Customs, the issue to be decided is whether in the facts and circumstances of the case, penalty under Section 112(b) of the Customs Act is imposable on the appellants.

2. Briefly stated the facts are that acting on an information, the Customs Officers, intercepted a Bus on 13.6.97 at Kudy Village, Jodhpur. The Officer got the suspected persons alighted from the bus and brought to Customs House, Jodhpur where search of them resulted in recovery of Indian currency from the possession of every one of them.

The total Indian Currency recovered was Rs. 23,00,240. All the eight persons admitted to have brought foreign marked gold biscuits from Ahmedabad and sold to the Appellants and they were carrying the sale proceeds to Ahmedabad. The Commissioner, under the impugned order, had confiscated absolutely the Indian

Currency under Section 121 of the Customs Act and imposed penalty, amongst others, on all the Appellants, holding that as the gold was carried by the persons from Ahmedabad without any bill/voucher and as they were given coat/jacket for concealing the gold, the gold was of smuggled origin.

3. Shri Karmendra Chowdhary, learned Advocate submitted that the statements of all the eight persons from whose possession, the Indian Currency was seized were recorded when they were under the control and custody of the Customs Officers in the Customs House; that as such no reliance can be placed on their statements; that the Appellants had denied to have purchased gold or any smuggled gold in their statements, that the burden of proof is on the Department to prove that the Indian Currency was the sale proceeds of the smuggled gold which the Department has not discharged at all; that the statements of the co-accused cannot be relied upon without independent corroboration.

4. Countering the arguments, Shri H.C. Verma, learned DR submitted that when the statements of the eight persons were recorded after the seizure of the Indian Currency they had mentioned the names of the Appellants whom the foreign mark gold biscuits were sold to; that the statements of co-accused can be relied upon for penalizing the Appellants without any corroborative evidence. Learned DR relied upon the decision in the case of Naresh J. Sukhawani v. Union of India, 1996 (83) ELT 258 (SC) wherein it has been held by the Supreme Court that the statement made before the Customs Officials "is a material piece of evidence collected by Customs Officials under Section 108 of the Customs Act. That material incriminates the petitioner inculpating him in the contravention of the provisions of the Customs Act. The material can certainly be used to connect the petitioner in the contravention....." 5. I have considered the submissions of both the sides. The Commissioner, in the impugned order, has given specific findings that eight persons had admitted to have knowledge that carrying, selling of smuggled gold was an offence and none of them had retracted from their statements. The Commissioner had also discussed the claim of three firms, which had claimed to have sent lawfully acquired gold and rejected their claim. Nothing has been contended by the learned Advocate for the Appellants on the said finding of the Adjudicating Authority. Shri Mahendra Soni, has admitted in his statements

to have bought 7 and 8 gold biscuits from Shri V. Navin Bhai and Jagdish Bhai of M/s. Gopal Bullion Ahmedabad on 13.6.97 and to have given the amount of Rs. 3 lakhs and Rs. 3.35 lakhs. Accordingly, penalty is imposable on Mahendra Soni as he acquired possession and dealt with the smuggled gold. I uphold the penalty imposed on him.

6. As far as other four Appellants are concerned, they had denied to have made any purchase of gold biscuits on 13.6.1997. Nothing incriminating had even been seized as a result of search of their business and residential premises. There is nothing to connect them with the seized Indian Currency except the statements of the co-accused. Accordingly, penalty cannot be imposed on these four Appellants for want of evidence about their dealing with the smuggled gold. The decision in the case of Naresh J. Sukhwani, supra, is not applicable as in that case there were photographs and other intrinsic material on the basis of which the revisional authority had concluded that the co-accused incriminated himself and the Appellant in passing off foreign currency out of India. I, therefore, set aside the penalty imposed on Shiv Narain Agarwal, Kamal Rishore, Daulal and Premchand.

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