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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-08-2002

Reported in : (2003)(159)ELT594TriDel

Judge : A T V.K., K Kumar

Appellant : Ram Prasad

Respondent : Commissioner of Customs

Judgement :

1. The issue involved, in this appeal filed by Shri Ram Prasad, is whether a penalty under Section 112 of the Customs Act is imposable on him.

2. Shri Bipin Garg, learned Advocate, submitted that the Customs Officers intercepted one Piara Lal, a Safai Karmachari of Indian Airlines, as soon as he came out of the aeroplane and recovered 63 gold biscuits from his possession; that the Commissioner, under the impugned order has imposed a penalty of Rs. 1.0 lakh on the appellant on the ground that the impugned gold was to be handed over to the appellant who in turn would have delivered to one Taranjit Singh alias Raju who would have again delivered the gold to one Ibrahim and as such the appellant was an important link between the smuggled gold and ultimate destination. The learned Advocate, further, submitted that no recovery had been effected from the appellant; that he had no knowledge about the apprehension of Piara Lal on 19/20-6-98; that on that night he had remained on duty up to 2.40 AM and as he suffered from acute gastroenteritis and severe dehydration, he got

himself admitted in the Brar Hospital, Pultighar, Amritsar; that medical aid was given to him by Lt. Col. (Dr.) R.C. Mahapatra till 23-6-98. The learned Advocate also referred to the Medical documents/reports and certificate dated 24-6-98 given by the doctor in this regard and the examination of Dr.

Mahapatra before the adjudicating authority and emphasized that the Department did not cross-examine his witness, Dr. Mahapatra. The learned Advocate also mentioned that his statement was recorded under threat and as such his statement was not a voluntary one; that further nothing incriminating was recovered from the search of his residential premises; that the entire case has been made on conjectures and surmises; that the provisions of Section 123 of the Customs Act are not attracted in his case as neither the impugned gold had been seized from his possession nor he had claimed the same. The learned Advocate also referred to the cross-examination of Shri Kewel Krishan, Superintendent, Customs to show that the Superintendent was himself in the past was suspended for possessing mobile phones. Finally, he submitted that though in the show cause notice, penalty was proposed to be imposed under Section 112(a) of the Customs Act, the adjudicating authority had imposed penalty on him under both Section 112(a) and (b) of the Act which is beyond the show cause notice; that penalty is not imposable as neither he has done or omitted to do any act which had rendered the goods liable for confiscation nor he had acquired possession of impugned gold or dealt with the same at all. The learned Advocate relied upon the decision in the case of Anant Samant v. C.C., Mumbai, 2000 (117) E.L.T. 444 (T) wherein the gold was seized by the Customs Authorities from main accused before he could hand over the gold to the appellant therein, the Tribunal held that "the appellants cannot come within the ambit of Section 112(b) because appellants had never acquired possession or in any way concerned in any of the activities mentioned in the Section or any measure dealing with any goods which the appellants knew or had reason to believe are liable to confiscation..." The learned Advocate also relied upon the decision in Jasmine Bhogilal Shah v. C.C., New Delhi, 2000 (121) E.L.T. 478 (T).

3. Countering the arguments, Shri R.D. Negi, learned SDR, submitted that both Piara Lal and the appellants are employee of the Indian Airlines; that Piara Lal had

admitted to have retrieved gold biscuit from the garbage of the toilet of the aeroplane where one Rajan Kumar, arriving from Sharjah, had dumped the same; that Piara Lal admitted that he was to deliver the gold in question to the appellant; that coming to know about the interception of Piara Lal, the appellant absented himself from duty; that Ram Prashad in his statement dated 24-6-98 admitted the mode and act of recovery, his active involvement and participation in the matter including his asking Piara Lal to retrieve the gold from the garbage in the toilet of the aeroplane; that Taranjit Singh, whom the appellant was to deliver the gold in question, had also admitted, in his statement dated 6-4-99, his involvement in smuggling of the impugned gold. The learned SDR relied upon the decision in K.G. Augustine v. C.C., 1997 (89) E.L.T. 625 (T) wherein it has been held that merely because the statement is retracted that does not loose the evidentiary value unless it can be shown that there were circumstances to show that the statement was taken from them under threat or coercion. Learned SDR also submitted that there was no necessity to cross-examine Dr. Mahapatra and the adjudicating authority had given specific findings for not accepting the documents as registration number of patient was not signed and indoor patient register was not produced. He also relied upon the decision in the case of Surjeet Singh Chhabra v. UOI, 1997 (89) E.L.T. 646 (S.C.). In reply, the learned Advocate mentioned that the decisions relied upon by the learned SDR are not applicable as facts are different. He also relied upon the decision in the case of S. Rajagopal v. C.C., Tricky - 2001 (129) E.L.T. 202 (T).

4. We have considered the submissions of both the sides. A penalty has been imposed on the appellant on the basis of the statements of the co-accused to the effect that Piara Lal was to deliver the gold to him after retrieving from the garbage in the toilet of the aeroplane. The appellant, on the other hand, has denied any involvement at all and has shown his absence at the airport on account of sickness. The medical reports and other documents, brought on record by the appellant clearly show that he was admitted to Brar Hospital on 20-6-98 for acute gastroenteritis and severe dehydration. More over the appellant has also examined Dr. Mahapatra as a defence witness in which the doctor stated about appellant being admitted for "AC Cast and severe dehydration". These medical documents cannot be brushed aside merely by observing that indoor patient

register, etc., were not produced. If the Revenue did not find the said documents acceptable, question in cross-examination should have been put to Dr. Mahapatra. Except the statements of co-accused, there is no other material against the appellant. The statements are not sufficient to hold that the appellant had dealt with the goods in any manner so as to attract imposition of penalty on him. It is not the case of the Revenue that gold was seized from the possession or he was carrying or dealing with the same. It has been held by the Tribunal in the case of Anant Samant, supra, that "Customs Act does not provide for levy of penalty for making any attempt or for that matter does not provide for levy of penalty for preparations for making any violation". In view of this we hold that no penalty is imposable on the appellant under Section 112 of the Customs Act. The appeal is thus allowed.