S.K. Vohra Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-22-2002

Reported in : (2003)(86)ECC158

Judge : P Chacko

Appellant : S.K. Vohra

Respondent : Cce

Judgement :

1. In this application, the appellant prays for waiver of pre-deposit of an amount of penalty of Rs. 60,000 and for stay of recovery thereof, pending the appeal. This application is in an appeal preferred against the order of the Commissioner of Customs, confiscating certain quantity of foreign origin gold biscuits and Indian currency of Rs. 35,000 under Sections 111, 120 and 121 read with Section 123 of the Customs Act and imposing a penalty of Rs. 60,000 on the applicant under Section 112.

The gold biscuits were admittedly seized from the applicant's possession, and so were the currency notes. Statements were recorded from the applicant and a few other persons under Section 108 of the Customs Act. The applicant stated, inter alia, that they had purchased the gold biscuits under proper bill from M/s. Raj Jewellers, Coimbatore and that the goods were lawfully acquired. He also claimed that the Indian currency of Rs. 35,000 was liquid cash meant for petty expenses.

However, the statements given by the other persons were incriminating insofar as the applicant was concerned. The department booked a case against the applicant mainly on the basis of such statements and issued show-cause notices to him proposing to confiscate the seized gold biscuits and Indian currency as also to impose penalty on him under Section 112. The notice was resisted. Ld. Commissioner, in adjudication of the notice, passed the order already referred to.

2. Ld. Counsel submits that the applicant has a strong prima facie case inasmuch as invoices issued by M/s. Raj Jewellers, Coimbatore, evidencing sale of the gold biscuits to the applicant were produced before the adjudicating authority in proof of the lawful acquisition of the goods. With regard to the currency, Ld. Counsel submits that the adjudicating authority has not stated cogent reasons in the impugned order for holding that the currency was the sale proceeds of any specific transaction.

3. Ld. DR, opposing this application, submits that the plea of lawful acquisition of gold biscuits was raised by the applicant, belatedly, in his statement dated 7.6.99. The applicant did not have such a case in his statement given to officers of customs on the first, 2nd and 3rd of June 1999. It is the further submission of the DR that the applicant did not adduce convincing evidence of lawful acquisition of the gold biscuits before the investigating or adjudicating authority. None of the persons, who gave incriminating statements against the applicant, was cross-examined in this case.

4. I have examined the submissions. I find that the plea of lawful acquisition of the gold biscuits was raised by the applicant not at the initial stage of seizure of the goods but at a belated stage. There is no satisfactory explanation of the delay either. On a prima facie overview of the evidence available on record, the applicant has no strong case for waiver and stay. There is a plea of financial hardships in this application. It is claimed that the applicant is staying in a rented house and is sustained by meagre income. Apparently, the applicant was dealing with foreign origin gold biscuits and such a person cannot reasonably claim to be suffering from having acute financial hardships. In fact, it has been submitted by Ld. Counsel for the applicant that the amount of Rs. 35,000 seized from the

applicant's possession was petty cash. A person carrying Rs. 35,000 as petty cash should afford to deposit any amount. I direct the applicant to deposit an amount of Rs. 25,000 within a period of 6 weeks from today and report compliance on 16.1.2003, in which event, there will be waiver of pre-deposit and stay of recovery in respect of the balance amount of penalty.