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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-11-2003

Reported in : (2003)(88)ECC54

Judge : Author: S Kang

Appellant : Ram Avtar Goel

Respondent : Cc

Judgement :

1. The brief facts of the case are that the officers of Central Economic Intelligence Bureau, New Delhi searched the clinical premises of M/s. Saluja Medical Hall, 21 Dayanand Marg. Darya Ganj, Delhi on 5.7.89. As a result of the search, one packet wrapped in a newspaper was recovered. Further, one suitcase and a brief-case were also recovered from the premises of the said clinic. On opening the said packet, it was found to contain seventeen bars of gold, forty-five strips of gold and three gold tails, all bearing foreign markings and of 24 cts. purity totally weighing 4976.200 gms. valued at Rs. 15,17,74(sic). The gold was seized in the reasonable belief that the same was smuggled into India. The suitcase and the brief-case were also seized. As a follow up action, premises of M/s. Smart Tailors, 21 Dayanand Marg, Daryaganj, Delhi, the residence of one Shri Ram Avtar Goel at G-56 Phase-1, Ashok Vihar, New Delhi and residential premises of one Shri Girish Khanduja at B-2/27-C Lawrence Road, Delhi were also searched on 5.7.89. At the residence of Shri Ram Avtar Goel, foreign currencies of various countries, travellers cheques and bank drafts in all equivalent to Rs. 72,510 and 6 bottles of

liquor of foreign origin were recovered and the same were seized. The search of the residence of Shri Girish Khanduja resulted in the recovery of Indian currency amounting to Rs. 30,000, traveller cheques worth Rs. 59,000 and some other documents which were also seized. Shri Varinder Singh Batra father-in-law of Shri Mahavir Singh Saluja, owner of aforesaid Saluja Medical Hall in his statement, recorded on 5.7.89 deposed that he along with his brother Satpal Singh Batra started dealing with smuggled gold with the help of Shri Ram Avtar Goel, a non-resident Indian based at Hongkong and one Shri Roshan Lal, his brother employed at Kathmandu. He stated that Shri Ram Avtar Goel had been arranging the deliveries of the contraband gold from Hongkong to Roshan Lal at Kathmandu; that from Kathmandu the gold was being smuggled into India by Roshan Lal and before leaving Kathmandu with gold, Roshan Lal used to inform him (Varinder Singh Batra) over tejephone and again on reaching Delhi Roshan Lal used to keep the gold at Saluja Medical Hall and used to inform him over telephone; that he was selling the smuggled gold to one Shri Jain of Maliwara who was taking deliveries after contacting him on telephone; that he and the said Jain were arranging the payments of the contraband gold to Ram Avtar Goel at Hongkong through hawala. He further said that about 7-8 days back under his instructions, Roshan Lal had come to Delhi by Gomti Express with 3.5 kgs. of contraband gold and delivered the same to him in Saluja Medical Hall; that he had sold that contraband gold to Shri Jain for about Rs. 11 lakhs; that on 5.7.89 Roshan Lal had come to Delhi with contraband gold by Lucknow Mail and at about 9.00 A.M. Roshan Lal had kept the contraband gold in his (Batra's) brother-in-law's shop.

2. The above statement of Shri Varinder Singh Batra was corroborated in material particulars by Shri Mahavir Singh Saluja in his statement of even date.

3. The statement was also recorded from Shri Ram Avtar Goel on 19.7.89.

In his statement Shri Ram Avtar Goel admitted his role in sending contraband gold to Varinder Singh Batra and Satpal Singh through their employee Shri Roshan Lal at Kathmandu. He also admitted that he was receiving payments through hawala arranged by Shri Jain. He stated that he was earning a profit of about 20-22 thousand Hongkong dollars on every kilogram of gold sent by him. He stated that

the gold seized by the officers of the Bureau on 5.7.89 from the shop of M/s. Saluja Medical Hall was sent to Pappu and Raju by Shri Roshan Lal. He further stated that six bottles of foreign origin were imported by him in his baggage during last various visits to India; that the foreign currencies were brought by him from Hongkong and the foreign currencies in all being equivalent to less than one thousand dollars were not declared at the time of customs clearance.

4. The proceedings were drawn against Shri Varinder Singh Batra, Satpal Singh Batra, M.S. Saluja, Satish Kumar Jassal, Ram Avtar Goel and Girish Khanduja which culminated in passing of the Order-in-Original dated 21.3.2000 by the Commissioner of Customs (General), New Customs House, New Delhi. The Commissioner in her order has confiscated the foreign currency of various countries/traveller cheques and bank drafts equivalent to Rs. 72,510 under Section 121 of the Customs Act, 1962.

She also imposed a penalty of Rs. 50,000 under Section 111 of the Customs Act, 1962 and 50,000 under Section 71 of the Gold (Control) Act, 1968 on Shri Ram Avtar Goel.

5. In the present appeals, the appellant has challenged the confiscation of Rs. 72,510 under Section 121 of the Customs Act, 1962 and imposition of penalties.

7. The contention of the appellant is that he is not concerned with the smuggling of the gold. He is only sending gold to Kathmandu from Hongkong to various customers. The customers may have smuggled the gold to India. Therefore, he is not liable for the default on the part of their customers. The appellant also submitted that there is no evidence on record to show that seized currencies in question is the sale proceeds of the smuggled gold.8. In this case, the appellant in his statement dated 19.7.89 admitted the modus operandi adopted by him and his co-noticees in respect of the gold smuggled into India. This was duly corroborated by the statement of other co-noticees Virender Singh, Roshan Lal and Mahavir Singh Saluja. From these statements, it is clear that the appellant was actively involved in the smuggling of the gold. Therefore, he is liable for penalty under the Customs Act as well as Gold (Control) Act.

9. In respect of the confiscation of currencies, even in his statement, the appellant had not admitted that seized currency was not the sale proceeds of smuggled gold. The onus is on the Revenue to show that seized currency is the sale proceeds of the smuggled gold. The Tribunal in the case of Ram Chandra v. Collector of Customs, 1992(60) ELT 277 held that before seizure of the currency as sale proceeds under Section 121 of the Customs Act, the following ingredients must be satisfied:- (iii) the sale must be by a person having knowledge or reason to believe that the goods were of smuggled origin, (iv) the seller and purchaser and the quantity of gold must be established by the Customs authorities.

10. In view of the above decision of the Tribunal, the confiscation of the seized currency of Rs. 72,510 is not sustainable and hence set aside.

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