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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-24-2003

Reported in : (2003)(161)ELT175TriDel

Judge : P Bajaj

Appellant : Aasu Ram

Respondent : Commissioner of Customs

Judgement :

1. This appeal has been filed by the appellant against the impugned order-in-appeal 9-8-2001 vide which the Commissioner of Customs (Appeals) has affirmed the order-in-original of the Addl. Commissioner who ordered the confiscation of the Indian currency of Rs. 3,51,100/- as sale proceeds of the silver smuggled from Pakistan under Section 121 of the Customs Act and imposed penalty of Rs. 20,000/- on the appellant and also on Shri Mahendra of equal amount (who is not appellant before me).

2. On 26-4-1993 the Police Officers of Ramsar intercepted roadways bus plying between Barmer and Sundra and carried out checking of the passangers. The appellant who was also travelling in that bus, on checking, was found in possession of Indian currency of Rs. 3,51,100/-.

He was detained by the Police along with money and thereafter handed over to the Customs Officers, Barmer. The appellant in his voluntary statement admitted that the money recovered from him was the sale proceeds of the silver weighing 2,200 to 2,300 tolas. Accordingly, he was served with a show cause notice for the confiscation of the currency and for imposition of penalty. The adjudicating authority initially vide order dated 15-3-1995 confiscated the Indian currency and imposed penalty of Rs. 20,000/- on the appellant and of equal amount on one Shri Mahendra, to whom the appellant allegedly sold the silver. But on appeal, that order was set aside and the matter was sent back to the adjudicating authority vide order dated 28-10-1998 for de novo adjudication. On de novo adjudication, the Addl. Commissioner of Customs ordered for the release of the Indian currency and did not impose any penalty on the appellant. That order was again set aside by the Commissioner (Appeals) vide order dated 26-5-2000 and the case was sent back for fresh decision. In the second round of the de novo adjudication, the Addl. Commissioner ordered the confiscation of the Indian currency and imposed penalty of Rs. 20,000/- on the appellant on the ground that the currency was the sale proceeds of the silver smuggled from Pakistan. This order was passed by him on 29-9-2000. On appeal, that order of the adjudicating authority (Addl. Commissioner) had been affirmed by the Commissioner (Appeals).

3. I have heard both sides. The bare perusal of the impugned order shows that except for the confessional statement of the appellant, there is not an iota of evidence on the record to suggest that the money recovered from his possession while travelling in the bus was the sale proceeds of the silver smuggled from Pakistan. How in what manner and of what quantity, the silver was smuggled from Pakistan, remains undisclosed in the show cause notice. The sole reliance has been placed by the Department on the confessional statement of the appellant wherein he allegedly stated that the money recovered from him was the sale proceeds of the smuggled silver. He also named two persons namely Mahendra and Soni, to whom he allegedly sold the smuggled silver. But Mahindra was found to be non-existent person while Soni did not corroborate the statement of the appellant. No silver was recovered from the possession of the appellant also along with the money at the time of checking or later on from his residential house or any other premises, during investigation. Therefore, for want of any corroboration from any other evidence or source, no presumption under the law could be drawn from the bare confessional statement of the appellant that the money recovered from

his possession was the sale proceeds of the smuggled silver. The initial burden was on the Department to prove that the money found in possession of the appellant was the sale proceeds of the silver smuggled from Pakistan, especially when the appellant later on retracted the confessional statement. As observed above, Soni to whom the appellant allegedly sold the silver and got the sale proceeds, had not admitted the purchase of the silver from him. The other alleged buyer of the silver, Mahindra, from the appellant was not even traceable. During the adjudication, no Punchnama witness appeared before the adjudicating authority to depose that the alleged confessional statement of the appellant was voluntarily. The appellant was initially apprehended by the Police, but there is nothing on the record to suggest if any statement of his was recorded by the Police regarding the tainted character of the money recovered from him.

He was handed over to the Customs Officers later on and there is nothing on the record to suggest if the handing over of the appellant to the Customs Officers took place by the orders of the Court. The Police, did not register any case against the appellant for any offence.

4. When the very smuggling of any silver by the appellant or by any other person from Pakistan does not stand proved on the record, no presumption that the money recovered from the appellant was the sale proceeds of that smuggled silver, could be legally drawn by the authorities below. They have raised wrong presumptions and assumptions against the appellant. Surmises and conjuctures as raised by the authorities below could not take place of any legal proof. Mere inability on the part of the appellant to explain the possession of the money, also could not be made basis for raising presumption that the money was the sale proceeds of the smuggled silver. No recovery of the silver from the appellant or from any other person to whom he allegedly sold, had taken place. Therefore, in my view, the money recovered from the appellant could not be legally seized under Section 121 of the Customs Act. No penalty also under Section 112(a) of the Act could also be imposed on him.

5. In view of the discussion made above, the impugned order of the Commissioner (Appeals) cannot be sustained and is set aside. The appeal of the appellant is

allowed with consequential relief, if any, permissible under the law.