

**Anju Devi Vs. Commissioner of Customs**

**Anju Devi Vs. Commissioner of Customs**

**SooperKanoon Citation :** [sooperkanoon.com/30261](http://sooperkanoon.com/30261)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Mar-11-2003

**Reported in :** (2003)(155)ELT579TriDel

**Judge :** S Kang, a T V.K.

**Appellant :** Anju Devi

**Respondent :** Commissioner of Customs

**Judgement :**

1. In these two appeals, filed by Smt. Anju Devi and Shree Sanatan Dev Goswami, the common issue involved is whether the appeals filed by them against Order-in-Original No. 75/A & R/VS/97, dated 3-10-1997 passed by the Commissioner of Customs are maintainable under Section 129A of the Customs Act.

2. Briefly stated the facts are that the officers of Directorate of Revenue Intelligence intercepted a Tata Mobile Van No. MP 09D 8093 on 30-8-1991 at Shahjahanpur Police Post; that the search of the said Van resulted in the recovery and seizure of 581 slabs of silver weighing 702.780 kgs. and valued at Rs. 47,08,626/- from five specially built secret cavities; that Rajendra Kumar, driver, in his statement dated 31-8-91 deposed that one Kanchan Aggarwal of Mathura appointed him as his driver; that Kanchan Aggarwal purchased the said Mobile Van which was registered in the name of one Manoj Kumar which was later on transferred in the name of Dinesh Aggarwal of Indore; that one Dinesh Kumar of Mathura took the Mobile Van to one garage and got the cavities made; that before

15th August he brought Silver weighing about 700 kg.

approx. from Beawar alongwith Dinesh and delivered the same to Kanchan Aggarwal; that in the present trip he went to Beawar from Mathura alongwith one Bharat and met one Rangwala near Railway station as per the direction of Kanchan Aggarwal; that Rangwala took away the vehicle, returned after about six hours and told them that he had concealed smuggled silver in the cavities made in the vehicle which is to be handed over to Kanchan at New Delhi. Shri Bharat also deposed in his statement dated 31-8-91 that he is an employee of Kanchan Aggarwal and he went to Beawar as per his direction for helping Rajinder in bringing smuggled silver. A show cause notice dated 7-2-92 was issued to Kanchan Aggarwal, Rajinder Kumar, Bharat and/or any other person claiming to be the owner of, or interested in, the seized silver for confiscating the silver and Mobile Van and for imposing penalty. The Commissioner under the impugned Order has confiscated the silver and Tata Mobile Van and imposed penalty of Rs. 15 lakhs on Kanchan Aggarwal and Rs. 2 lakhs each on Ra-jender Kumar and Bharat.

3. Shri P.K. Mittal, learned Advocate, submitted that silver which has been confiscated by the Commissioner under the impugned order belong to Thakum Shri Madan Mohanji Trust Board, Brindawan; that the temple trust Board at its meeting held on 28-4-1990 had authorized the Appellant No.2 to get all the old and broken utensils lying in the toshkhana melted so that new items may be got manufactured; that accordingly Kanchan Lal Aggarwal, saraf, was given the said work; that silver utensils, etc.

got melted from one Mahesh Chander, silversmith on 12-8-91 in the temple premises itself and these were made into 581 slabs weighing 702.780 kgs.; that as nothing was heard from Shri Kanchan Lal Aggarwal for a long time, several letters were sent to him and a final notice dated 20-1-1992 was given to him; that Kanchan Lal Aggarwal informed the Trust that silver in question was seized by the DRI officers; that the Trust in its meeting on 15-9-93 decided to take legal action against Kanchan Lal Aggarwal; that thereafter the Temple Trust Board filed a criminal case against Kanchan Lal Aggarwal in the Court of 3rd Metropolitan

Magistrate, Mathura which is still pending. The learned Advocate, further, submitted that a written claim dated 7-9-97 was filed before the Commissioner of Customs and their authorized advocate appeared also before the Commissioner; that all the facts were narrated in the said claim and the Commissioner was requested to release silver which belong to Temple Trust; that the Commissioner did not give full attention and consideration to the claim made by the Temple Trust and ordered absolute confiscation of the silver which is not correct; that it was incumbent on the part of the Commissioner to issue a show cause notice to the Appellants who had lodged the claim on silver as the owner. The learned Advocate also submitted that Tata Mobile Van belongs to the husband of Smt. Anju Devi, Appellant No. 1; that the request was followed by the Counsel's letter dated 29-8-1997; that the vehicle was purchased second-hand through the broker at Indore who might have supplied a wrong address to the R.T.O.; that merely on the basis of wrong address given for registration the Commissioner ought not to have rejected claim regarding the ownership of the vehicle; that the non-serving of the show cause notice on the pretext that the correct address was not available is unjust as the address of Dinesh Kumar Aggarwal could have been easily ascertained from Rajednder Kumar or Bharat The learned Advocate submitted that the confiscation of both vehicle and silver is without the authority of law. He relied upon the decision in the case of Shree Lekha Finance Co. Ltd. v. Collector of Customs - 1993 (66) E.L.T. 78 (Calcutta) wherein it was held that in absence of show cause notice issued to the owner of the vehicle the department is not entitled to proceed against the company and the vehicle must be returned by the Customs authorities. Reliance has been placed also on the decision in the case of H.A. Abdul Mustafa & Co. v. Additional Commissioner of Customs - 1986 (25) E.L.T. 718 (Tribunal) wherein it has been held that confiscation of vehicle is justified when conveyance is used as a means of transport in smuggling of goods with the collusion of person in charge thereof. The learned Advocate also relied upon the decision in the case of Yusuf Kadar v. Collector of Customs (Preventive), 1988 (38) E.L.T. 186 (Tribunal) wherein it was held that service of notice on the wife who is neither an agent nor having a Power of Attorney on behalf of her husband and affixing of notice on the notice board of the Custom House are not treatable as service of notice under Section 153(a) of the Customs Act.

4. Countering the arguments Shri V. Valte, learned SDR, submitted that none of the Appellants had approached the department claiming the ownership of the seized silver and the vehicle immediately after the silver was seized along with the vehicle; that according to the Appellant No. 2 silver was handed over to Kanchan Lal Aggarwal by Temple Trust in August, 1991 whereas the claim has been made to the Commissioner only in September, 1997 i.e. after more than 6 years of alleged handing over of silver to Kanchan Lal Aggarwal; that both the Appellants are not aggrieved party to the Adjudicating Order and as such the Appeals filed by them cannot be entertained under Section 129A of the Customs Act. He, further, submitted that as far as Tata Mobile Van is concerned, it is registered in the name of one Dinesh Aggarwal, S/o. Govardhandas, 21, Jawahar Marg, Indore; that no proof had been brought on record by the Appellant No. 1 that the impugned Tata Mobile Van was registered in the name of Appellant's husband; that the Commissioner had also not found any force in the claim of Mrs. Anju Devi, Appellant No. 1, as the inquiry conducted at Indore revealed that the premises, address of which was mentioned in the registration certificate of the vehicle, was family property of one Shri Shujauddin and nobody by the name Dinesh Kumar had ever lived there. The learned SDR also submitted that if silver had been acquired by Kanchan Lal Aggarwal from Temple Trust, he would have gone to Delhi to inform the DRI officers; that instead of informing DRI officers he went to Bombay and in reply to the summons he informed the DRI officers about his non-availability for tendering statement. The learned SDR also mentioned that the Commissioner has given his findings that Kanchan Lal had claimed to have gone to Churu for searching the proper craftsman for making utensils for deity and it is difficult to comprehend that in normal circumstances a person would travel such a long distance along with huge quantity of silver just for the purpose of searching proper craftsman; that the Commissioner had also observed in the impugned Order that the last page of the so called Minutes of the Temple Trust Authority did not bear the signatures of the person which speaks of the non-authenticity of the Minutes. Learned D.R., therefore, contended that both the Appellants are not aggrieved persons under the law to file these appeals.

5. We have considered the submissions of both the sides. As per Section 129A of the Customs Act, any person aggrieved by any of the Order passed by the

Commissioner of Customs or Commissioner (Appeals) may file an appeal with the Appellate Tribunal. The appeal can be filed only by a person who is aggrieved by the Order in question. A person aggrieved must be a person who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongly affected the title to something.

It has been held by the Supreme Court in the case of Northern Plastics Ltd. v. Hindustan Photofilm Mfg. Co. Ltd. -1997 (91) E.L.T. 502 (S.C.) that "it is not possible to agree with the contention of the learned Counsel for the contesting respondents that Sub-section (1) of Section 129A entitles any and every person feeling aggrieved by the decision or order of the Collector of Customs as an Adjudicating Authority, to prefer the statutory appeal to the Appellate Tribunal." The Appellant No. 1 has not succeeded in establishing ownership of the impugned Tata Mobile Van. The registration of the Tata Mobile Van is in the name of one Dinesh Kumar of Indore and not of D.K. Aggarwal, Mathura. As the, Appellant No. 1 had not succeeded in establishing that the vehicle was owned by her husband she cannot be called an aggrieved person and as such is not entitled to file the appeal.

6. We observe that the Appellant No. 2 has not succeeded in proving that the silver which has been confiscated by the Commissioner belong to the Temple Trust Board. The silver got by the Temple Trust Board after melting old pieces of silver utensils, etc. is reported to have been given to Kanchan Aggarwal in 1991. Nothing has been brought on record to link the silver under confiscation with the silver said to have been given by the Temple Trust Board to Kanchan Aggarwal. Even in the complaint filed against Kanchan Lal Aggarwal in 1992 the fact of silver having been seized by Customs Authority in August, 1991 had not been mentioned. There is substantial force in the findings of the Commissioner that had the silver been acquired by Kanchan Lal Aggarwal lawfully, he would have informed the same to the DRI Officers with all the documents instead of going to Bombay and not responding to summons.

We are, therefore, of the view that the Appellant No. 2 has not succeeded in showing that silver in question belongs to Temple Trust Board and as such they

have no locus standi in the case, and therefore, appeal is not maintainable. All the decisions relied upon by the Advocate for the Appellants are not applicable to the present matters as the facts are different. In the case of Yusuf Kadar the penalty was imposed on the Appellants without serving a copy of the show cause notice on him. In this case the show cause notice was served on Rajender and Bharat who were found in the Tata Mobile Van at the time of seizure of the silver and the show cause notice was issued to Kanchan Lal Aggarwal whom the silver belongs to. In the case of Sree Lekha Finance Co. motor vehicle belonged to the company whereas the show cause notice was issued to the Accountant of the company who was not the owner of the motor vehicle, and therefore, the Calcutta High Court held that the show cause notice had not been issued to the Company. In view of these facts and circumstances we hold that none of the Appellants are aggrieved persons in terms of the Section 129A of the Customs Act. Accordingly the appeals filed by them are not maintainable and are dismissed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**