Ranjit Singh Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-09-2003

Reported in : (2004)(92)ECC154

Judge : A T V.K., P Chacko

Appellant : Ranjit Singh

Respondent : Cc

Judgement :

1. Arguing the matter for restoration of the appeal, filed by Shri Ranjit Singh, which has been dismissed by the Tribunal Vide Final Order No. A/342/03-NB(B) dated 23.6.2003, Shri. R.K. Bajaj, learned Advocate, submitted that he could not attend the hearing on 23.6.2003 as he was suffering from high fever and blood pressure. We also heard Shri Virag Gupta, learned DR, who has no objection if the appeal is restored.

Accordingly, we recall our earlier order and restore the appeal to its original number.

2. Brief facts of the case are that on the specific information, the officers of the Directorate of Revenue Intelligence, intercepted on 11.6.95 one Contessa car No. PB-10-4787 in which Shri Wirsa Singh and Sarabjit Singh were traveling. The officers also intercepted two scooters No. PB-08J-8261 and PB-08J-9973, which were being driven by Ranjit Singh, the appellant and Shri Naresh Kumar. The

search of scooter No. PB-08J-8261, driven by the appellant, resulted in the recovery of foreign currency equivalent to Rs. 46,22,958.40. Indian currency of Rs. 11,000 was recovered from the second scooter. The search of Contessa car resulted in the recovery of foreign exchange equivalent to Rs. 13,80,044.00. Shri. Ranjit Singh, in his statement, admitted the recovery of the foreign and Indian currency from both the scooters and car and stated that he, alongwith Naresh Kumar, carried the assorted foreign currency worth Rs. 59 lakh approximately and Indian currency Rs. one lakh in two packets, which were the sale proceeds of the 110 gold biscuits given to them by Wirsa Singh and Sarabjit Singh and while they were in the process of exchange of such sale proceeds, they were all caught by the officers in the presence of witnesses. He also mentioned that he had agreed to sell the gold biscuits for a commission of Rs. 350 per biscuit with Wirsa Singh and Sarabjit Singh; that Naresh Kumar, his accomplice, was a broker of silver and gold and had consented for such sale on commission of Rs. 100 per biscuit; that, previously, he had received 50 gold biscuits and had delivered its sale proceeds to him after deducting the commission; that he had paid the commission to Shri Naresh Kumar also; that Naresh Kumar used to take delivery of gold biscuits from his house at Jallandhar; that the entire plan was arranged with Wirsa Singh on phone installed at the residence of Naresh Kumar. Shri Naresh Kumar also, in his statement, corroborated the statement given by the appellant. He had deposited that he had agreed to sell the gold biscuits on account of his poor financial condition; that he used to sell these biscuits through one Shri Banti Dalai and handed over its sale proceeds to the appellant at his residence. Shri Wirsa Singh also, in his statement, admitted that on 11.6.95, he had left with his cousin, Sarabjit Singh for Jallandhar from Chandigarh in the Contess a car to collect the sale proceeds of foreign marked gold biscuits. He had, further, submitted that he was carrying on the smuggling of gold with one Shri Khalid of Pakistan for the past many years; that he had earlier given delivery of gold biscuits to Ranjeet Singh and Naresh Kumar and had collected the sale proceeds from them; that he used to receive the commission of Rs. 3,50,000 per 100 gold biscuits. The Commissioner, under the impugned order, has confiscated their entire foreign currency and Indian currency, besides confiscating the car and scooters. He also imposed a personal penalty of Rs. 10 lakh on Wirsa Singh, Rs. one lakh on

Sarabjit Singh, Rs. 5 lakh on Ranjit Singh and Rs. two lakh on Naresh Kumar.

3. Shri R.K. Bajaj, learned Advocate, submitted that the statements were recorded as per the dictation and satisfaction of the officers of the Department under duress and pressure; that such statements cannot be termed as voluntary confession; that the Panchnama, in the instant case, could not be relied upon because witnesses to the Panchnama were not allowed to be crossed-examined by the appellants; that in absence of any corroboration of appellants' statement by an independent witness, no legal consideration can be given to the same; that though the show cause notice was issued by the Commissioner of Customs & Central Excise, Chandigarh, the same had been adjudicated by the Commissioner of Customs, Amritsar, which is without jurisdiction. He, further, submitted that the appellant is a handicapped, aged and ailing person and is in a private service earning a meagre salary of Rs. 2,500 p.m. Finally, he submitted that the case of co-accused, namely, Wirsa Singh and Naresh Kumar had already been decided by the Appellate Tribunal vide Final Order No. A/773-74/99 dated 19.8.99, wherein, the penalty, imposed on them had been reduced to Rs. 2.50 lakh and Rs. 50,000 respectively; that, therefore, the appellant also deserves sympathetic consideration and expects justice at par with the relief allowed to the co-accused.

4. Countering the arguments, learned DR, reiterated the findings as contained in the impugned order passed by the Commissioner, wherein, he has given his findings that no evidence had been placed on record to support their contention that the statements were recorded in duress and were not voluntary; that it has been recorded by the Commissioner, in the impugned order, that the appellants were produced before the Magistrate and there was no allegation in the Bail Application to indicate that there was any use of force and pressure or duress regarding statement nor was there any report from the medical authorities to support duress or pressure. The Commissioner has also observed that the retraction was not immediate, but was after a gap of time.

5. We have considered the submissions of both the sides. This Tribunal has already decided the appeals, filed by Shri Wirsa Singh and Shri Naresh Kumar, vide Final Order No. 773-74/99 dated 19.8.99. After considering the submissions

of both the sides, the Tribunal has upheld the confiscation of foreign currency and Indian currency and sale proceeds under Section 121 of the Customs Act, 1962. The Tribunal, however, has found the penalty imposed on both Wirsa Singh and Naresh Kumar on higher side and reduced the same. In view of the fact that the evidences have already been considered by the Tribunal, we find that the present appellant has not produced any material evidence before us to differ with the findings of the Tribunal in appeals filed by Shri Wirsa Singh and Naresh Kumar. He has also not brought on record before us any evidence that , he had retracted the statement immediatedly after the same was made. Accordingly, we hold that the penalty is imposable on him. However, we reduce the penalty to Rs. two lakh following the ratio of the earlier decision. The appeal is disposed of in the above manner.