# J.E. Dadabhoy Vs. Collector of Customs

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

**Decided On :** Mar-20-1987

**Reported in** : (1989)(22)LC560Tri(Mum.)bai

**Appellant** : J.E. Dadabhoy

**Respondent** : Collector of Customs

**Judgement** :

1. This appeal arises out of and is directed against the Order No.1773/85 dated nil passed by the Collector of Customs (Appeals) Bombay.

The appellant's sister-in-law who was the resident of Dubai arranged dispatch of one Webley Revolver and 100 cartridges from London by Air flight. When the appellant sought clearance, the Customs objected to the clearance and in the adjudication proceedings, the Assistant Collector of Customs, Air Cargo after affording personal hearing ordered absolute confiscation of the revolver and the cartridges on the grounds that the fire-arm in question was not exempted from 1TC restrictions; in terms of Para 121 of the Import Policy AM 85 a valid CCP was required to be produced for the clearance of the fire-arm imported as a gift and no such CCP was produced and lastly that the gift not being from a close relative mentioned under Para 121(1) of the Policy AM 85, no CCP would have been issued.

3. Being aggrieved by the order, the appellant carried the matter in appeal to the Collector (Appeals). The Collector (Appeals) rejected the appeal holding that that

order passed by the lower authority was correct and maintainable for the reasons stated in the order of the lower authority. Hence this appeal.

4. During the hearing of this appeal, Shri Deshpande did not dispute the legality of the order passed by the Assistant Collector. He urged that the sister-in-law who sent the revolver and the cartridges would not fall under the category of the relatives mentioned in paragraph 121(1) of the policy in question and therefore even if he had applied for a CCP, no CCP would have been issued. He further admitted that CCP was a must for the import of the fire-arm and no CCP was produced. He, however, urged that the gift was an unsolicited one. The appellant holds a licence issued by the proper authority. The appellant was in need of a fire-arm since he is a licensed liquor vendor in Dhulia city which is inhabitant by tribals and there is perpetual danger to his life and property. It was also the contention of Shri Deshpande that the Custom House has been releasing fire-arms received as gifts by levying fine of 10% to 20% and since the appellant's requirement being bonafide, the order of absolute confiscation was unjustified. Shri Deshpande also submitted that the order of the Collector (Appeals) is not a speaking order. The appellant had not challenged the legality of the order passed by the Assistant Collector. He had only pleaded that there should not have been absolute confiscation since the goods in question was not prohibited goods and that in similar instances the Custom House had allowed clearance on payment of fine but then the Collector (Appeals) had not considered neither the bonafide nor the previous practice nor even the justness of the order of absolute confiscation. He therefore prayed that the order of confiscation may be set aside and that there may be a direction to release the goods on payment of fine.

5. Shri Prabhu appearing for the Collector however submitted that there is no infirmity in the order passed by the Assistant Collector. He contended that it is entirely within the discretion of the Assistant Collector to allow or not to allow release on payment of fine in lieu of confiscation. He further submitted that since the appellant has not produced any B/E under which similar goods had been released on payment of fine, he is not in a position to admit that such practice was prevailing in the Custom House.

6. I have carefully considered the submissions made by both sides.

There is considerable force in the contention of Shri Deshpande that the order of the Collector (Appeals) is not a speaking order. Under Sub-section (4) of Section 128A, the Collector (Appeals) is required to state the points for determination, the decision thereon and the reasons for the decision. Merely stating that the order of the lower authority is correct and maintainable for the reasons stated therein would not amount to proper disposal of the appeal. The Collector (Appeals) is required to consider the contentions urged and thereafter record his reasons for accepting or rejecting the contentions. It is unfortunate that the Collector of Customs (Appeals) in the instant case did not consider the appellant's contention as to the practice that was prevailing in the Custom House or as to the contention that the order of absolute confiscation in the circumstances of the case was unjustified. In the circumstances I consider it to be a fit case to interfere with the order passed by the Collector (Appeals).

7. In the result, I allow this appeal, set aside the order passed by the Collector (Appeals) and remand the matter to the Collector (Appeals), to consider as to whether the facts and circumstance justify absolute confiscation of the goods in question. He shall further consider as to the alleged past practice followed by the Customs authorities. The appellant is at liberty to produce evidence before the Collector (Appeals) regarding the past practice. The Collector (Appeals) shall thereafter pass orders in accordance with law.