

Man Singh Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-29-1987

Reported in : (1987)(13)ECC173

Appellant : Man Singh

Respondent : Collector of Customs

Judgement :

1. In this case, the facts are that on an information, the Customs (Preventive) Staff searched the residential premises occupied by one Ram Charan S/o Ram Pal Singh who stated that one Man Singh was also residing with him in the same room. As a result of this, 34 Omax wrist watches and 7 pieces of Omax electronic watches of foreign origin were recovered from one dark blue attache case said to be belonging to Man Singh. Some wearing apparel and documents belonging to Man Singh were also found in the said attache case. The documents showed that Man Singh was residing at the premises searched. Ram Charan stated that the seized goods belonged to Man Singh and that he alone could account for the goods. The matter was adjudicated by the Assistant Collector of Customs, who noted that the watches had been recovered from the attache case belonging to Man Singh, who was at large, and who, despite summons issued to him on four different dates, failed to make an appearance.

This was considered an evidence of his guilty mind. The Assistant Collector confiscated absolutely the seized watches and also imposed a personal penalty of Rs. 7,000/- on Man Singh. Ram Charan was exonerated. When the appellant went

in appeal before the Collector of Customs (Appeals), he upheld the order of the Assistant Collector, but reduced the penalty on the appellant to Rs. 3,000/-.

2. Heard Shri S.C. Puri, Advocate and Shri S. Krishnamurti, SDR. It is submitted on behalf of the appellant that a few days prior to the seizure, appellant had gone to his native place to see his ailing mother and returned after 2-3 months of the incident. It is submitted that Ram Charan falsely named the appellant although the appellant had no concern with the watches seized and that Ram Charan has himself dealt with the watches. It is claimed that Ram Charan contacted the officers of the Customs department many times for the return of clothes and the 7 old and used watches which were meant for repairs. It is stated that the appellant had not gone underground as alleged by the department and that there was no evidence to connect the appellant with the seized watches except the uncorroborated statement of co-accused, it is further submitted that the lower authorities have failed to consider that the watches in question had not been seized from the exclusive possession of the appellant and were not in his control at the material time. Further it is submitted that the room was belonging to Ram Charan and occupied by him. Ram Charan was also available in the room at the material time and the suit case and watches were in fact found from the possession of Ram Charan. Ram Charan named another person only to save his own skin.².

1982 ELT 82 (CBEC) - Central Board of Excise and Customs.

In Re: Chander Shekhar, New Delhi.

4. Shri S.C. Puri, requests as an alternative plea, for reduction of penalty urging two grounds. Firstly, that the value of the watches under seizure is only Rs. 7,000/- and secondly, that the appellant is a poor man with an income of Rs. 600/- per month.

5. Shri S. Krishnamurthi, learned SDR reiterates the views expressed by the lower authorities. He emphasises that the failure of the appellant to respond to the summons is a proof of his guilty mind.

6. It is observed that the impugned goods were recovered from the residential premises which was occupied by Ram Charan. They were found in the attache case belonging to Man Singh, appellant in this case.

It is also on record that Man Singh was also residing in the same premises. Ram Charan stated that seized goods belonged to Man Singh and he alone could account for the goods. The fact that Man Singh had also resided in the same premises and the impugned goods were recovered from Man Singh's attache case which also contained his other belongings raises a strong suspicion that the impugned goods also belonged to Man Singh. But there is no clear evidence in this regard other than the statement of Ram Charan. The lower authorities have ignored the fact that when they searched the residential premises Man Singh was not there. The attache case from which the watches were recovered belonged to Man Singh but that by itself is no proof that the watches under seizure also belonged to him or that he had kept them in the attache case. The case of the department rests on the thin evidence of the statement of Ram Charan but that is entirely uncorroborated by any other evidence or facts.

7. I have considered the fact that a number of summons were issued to the appellant and that these did not obtain his appearance before the lower authorities. As per the record it is established that appellant was not available at the address to which the said summons were sent.

Appellant submits that he was away to his village where he was compelled to remain due to family circumstances. Appellant will have to be given the benefit of doubt in the absence of any other evidence to the contrary and failure to respond to the summons, which he had not even received cannot, in the absence of any other evidence, be held to be an evidence of mens rea, as done by the lower authorities.

8. I have also seen the case law cited by the learned Advocate, the ratio of these decisions undoubtedly are in favour of the appellant.

9. The orders of lower authorities imposing penalty on the appellant are set aside without effecting the order of confiscation of the impugned goods other than

appellant's old clothing which should be returned to him. No orders are passed as regards the claim to the so called 7 old and used watches which according to the appellant were meant for repair as this claim should have been made and substantiated before the lower authorities which was not done.

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