Ashwani Bhatia Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-06-2004

Reported in : (2004)(94)ECC349

Judge : P Bajaj

Appellant : Ashwani Bhatia

Respondent : Cc

Judgement :

1. This appeal has been directed by the appellant against the impugned Order-in-Original vide which penalty of Rs. 5 lakhs has been imposed on him under Section 112(a) of the Customs Act.

2. The learned counsel has contended that no recovery of smuggled goods had taken place from the house, shop or personal search of the appellants and that he had been penalized only on the basis of statements of Shri Satpal Singh and Shri Manjit Singh from whom the recovery of gold biscuits allegedly took place on 6.3.2000 when they were intercepted near the Dholewala Chowk Bridge, Ludhiana, while coming in a car. Even they in their statements had not specifically named the appellant and that the shop, residence and mobile telephone numbers furnished by Shri Manjit Singh also did not establish any link of the appellant with him and Shri Satpal Singh. It is a case of non-evidence, according to the counsel, and as such the provisions of Section 112(a) could not be legally invoked against the appellant.

3. On the other hand, the learned JDR, has reiterated the correctness of the impugned order and contended that from the mobile number furnished by Shri Manjit Singh, it was clear that the appellant had link with him and also with one Shri Javed of Pakistan who allegedly sent the gold biscuits to one Shri Rakesh @ Bittoo of Jammu who further passed on the same to Shri Satpal Singh and Manjit Singh. Therefore, the appellant had been rightly penalized.

4.1 have heard both sides and gone through the record. From the perusal of the record, it is quite evident that recovery of the smuggled 29 biscuits took place from Shri Satpal Singh and Shri Manjit Singh on 6.3.2000 when they were intercepted near Dholewala Chowk Bridge, Ludhiana. Shri Satpal Singh in his statement had nowhere named the present appellant as the person to whom these gold biscuits were to be delivered. He has rather stated that these gold biscuits were meant for Shri Manjit Singh as he was to deliver the same to him and that he earlier also delivered four consignments of the biscuits to Shri Manjit Singh. Therefore, his statement is of no help to the Department to prove the case against the appellant.

5. Even the statement of Shri Manjit Singh recorded on 7.3.2000 is not of any help to the Department for invoking the provisions of Section 112(a) of the Customs Act against the appellant. He has only disclosed in his statement that the biscuits were to be delivered to one Bittoo of Ludhiana whose name and address he did not know. He thus did not specifically name the appellant to whom the biscuits were to be delivered by him. He, no doubt, gave the residence, shop and mobile telephone numbers to the investigating officer in his statement to be of the appellant and the investigating officer even obtained the statement of the incoming and out-going calls of that mobile number for the period 1.2.2000 to 10.2.2000. But from the statement it is difficult to infer that the income calling were received by the appellant or the out going calls were made by him to Shri Manjit Singh or Shri Satpal Singh or Shri Javal or or Shri Rakesh @ Bittoo of Jammu regarding the smuggling of the gold. Similarly, no evidence has been collected to show that any such calls were made by the appellant from his residence or shop telephone numbers, to any of them. Therefore, no inference could be drawn from the mere supply of telephone numbers of the appellant by Shri Manjit Singh that the gold biscuits recovered from Shri Manjit Singh and Shri Satpal Singh were meant for

delivery to the appellant especially when no gold biscuits or any other incriminating articles showing the link of the appellant with any of the above-said persons, had been recovered from his shop or house. No unaccounted money had been also recovered from him. Therefore, on the strength of ambiguous and vague statement of Shri Manjit Singh, the appellant could not be held to be guilty of having possessed the smuggled gold biscuits or connected with the smuggling of the same so as to impose penalty under Section 112(a) of the Act.

6. In view of the discussion made above, the impugned order of the Commissioner of Customs cannot be sustained against the appellant and the same is set aside. The appeal of the appellant is, therefore, allowed with consequential relief, if any, permissible under the law.