Mr. Roach Patrick Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-29-2004

Judge : S T S.S., T Anjeneyulu

Appellant : Mr. Roach Patrick

Respondent : Commissioner of Customs

Judgement :

a) Based on an information, appellant, a non resident Indian who was a pax, was intercepted in 23.3.2003 at the Sahar Airport Mumbai & on examination of his checked in baggage, in a carton of Green Vegetables class & meat boxes a polythene wrapped package was found, which on detailed examination was found to contain foreign currency US dollar, UAE & Omani Dirhams equivalent to Rs. 41,95,479/- foreign currency amounting to Rs. 53,707 in Omani Riyals was also found on the person of the pax after a physical search of his body/clothes he was wearing.

b) The pax disclosed the foreign exchange amount to Rs. 41,95,479/- to be given to him by one Clifford Menezes who was identified but he & his wife denied anything to do with this currency.

c) On 9.04.2003, the pax changed his statement & claimed the amount of foreign currency equivalent to Rs. 41,55,471/- as to have been brought by him from Oman for use in the kidney treatment to be undergone & that this was the same amount he was carrying back & submission of certain documents.

d)The Foreign Exchange fund was in excess of what was permissible under Foreign Exchange Management (Export & Import of Currency) Regulations 2000 read with Section 6 (3) (G) of Foreign Exchange Management Act 1999 & was held liable for confiscation under Section 113 (d) & (c) & (h) of the Customs Act 1962 & the pax liable for penalty under Section 114 of the Act & a notice was issued.

It may be mentioned that the notice had denied the ownership of currency in his bail applicant. The recovery of assorted foreign currency of US$ 40,000/- UEE Dirhams Rs. 1,80,000/- and Omani Riyals 1276.5/- from the cardboard box totally equivalent to Indian Rupees 41,95,473/- indicated that the mode of transportation of the said currency has not been above board. In fact, it only shows that there was conscious and deliberate attempt to smuggle out the currency by concealing them in a manner to avoid detection. The grammatical meaning of the word' concealing' is to keep secret, hide. Hence, concealment. The recovery details as seen from the panchanama confirm this aspect. Therefore, I have no hesitation in rejecting the goods were not concealed. In the facts and circumstances of the case and as discussed above, the foreign currency equivalent to Indian Rs. 41,95,473/- attempted to the smuggled out of Indian is liable to confiscation under Section 113(d)(e) & (h) of the Customs Act, 1962 read with Section 6(3)(g) of the FEMA, 1999 further, Omani Riyals equivalent to India Rs. 53,707/- is also liable to confiscation under Section 113(d) read with Section 6(3)(G) of FEMA 1999.

& ordered absolute confiscation of the currency amounting to 1 Rs. 41,95,475/- & Rs. 53, 707/- & imposed a penalty of Rs. 4 lakhs under Section 114 (1) of customs Act 1962.

f) Decision in the case of Halithu Ibrahim (2002 (148) ELT 412) where in under similar circumstances the majority view of the Tribunal was that even if possession/ acquisition of foreign currency under the excisable Foreign Exchange Regulation Act, 1973, redemption fine for release of such undisclosed currency was called for and in view of the consistent orders of this Tribunal & the Revision Authority, Government of India allowing the release on redemption fine & reducing the fines and penalties, we would also order that the currency in this case should be released on appropriate fine & penalty following the cases in this regard. For this purpose, the order is set aside & remitted to the original authority who should hear the appellants & order the determination of appropriate fine & penalty for release of the foreign currency under seizure in this case as recovered from the checked in baggage.

As regards the foreign currency recovered from the person of the pax, the same is not to be liable to confiscation as it is well within the limits which an NRI can bring & take out of India, confiscation of the same is required to be set aside & the same to be released to the pax.

2. in view of the findings, the order is to be set aside & appeal allowed as remand for de novo adjudication in above