

Mohd. Azeem Vs. Cc (Airport)

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Dec-06-2004

Reported in : (2005)(98)ECC323

Judge : P Chacko, R K Jeet

Appellant : Mohd. Azeem

Respondent : Cc (Airport)

Advocate for Pet/Ap. : Shri. A. Ganesh

Judgement :

1. This appeal is filed by the appellant against the Order-in-Original No. 75/2000-INT dated 31.5.2000 passed by the Commissioner of Customs, (Airport), Chennai, whereby the Commissioner has confiscated gold jewellery weighing 2,934 gms valued at Rs. 12,49,003(I.V.) (Rupees twelve lakhs forty-nine thousand and three only) and foreign currency equivalent to Rs. 84,539 (Rupees Eighty-four thousand five hundred and thirty-nine) Under section 113(d) & (h) of the Customs Act, 1962 read with Sections 13 & 67 of the Foreign Exchange Regulation Act, 1973. He has also confiscated 13 packets of hair clips valued at Rs. 5000 (CIF) (Rupees Five thousand only) and two polythene bags and the packing tape of no commercial value used to wrap the gold jewellery Under section 119 of the Customs Act, 1962. He has also imposed a personal penalty of Rs. 15000 (Rupees Fifteen thousand) on the appellant Under section 114(i) of the Act.

2. Brief facts of the case are that on 2.10.1999 officers of the Directorate of Revenue Intelligence, Chennai intercepted the appellant herein, holder of Sri Lankan Passport, bound for Colombo by Indian Airlines flight and when asked whether he was carrying any contraband he replied in the negative. Black colour Zip bag with tag No. 0026172 was found to contain Gold jewellery weighing 2934 grams valued at Rs. 12,49,003 (I.V.) in two polythene wrapped with packing tapes and 15 packets of hair clips valued at Rs. 5,000 (CIF). Personal search of the passenger resulted in the recovery of foreign currency equivalent of Indian Rs. 84,539. Appellant admitted that the gold jewellery and the foreign currency belonged to one Liaqat Ali who had promised to give him Rs. 10,000, if he successfully evaded the Customs and hand over the same at Colombo. The gold jewellery, foreign currency, black zipper bag alongwith 15 packets of ladies hair clips used for concealing the said gold jewellery, together with the air ticket, boarding card and the baggage tags of the appellant were seized under a mahazar for further action. The appellant in his voluntary statement dated 2.10.1999 narrated the sequence of events that subsequently led to the seizure of the goods. He has also given another statement on 28.12.99 wherein it was stated inter alia that the gold jewellery and foreign currency belonged to Liaqat and the whereabouts of the said person was not known. It was in these circumstances that show cause notice was issued to the appellant and other person viz. Liaqat Ali, which culminated in the order of adjudication as noted above.

3. Shri A. Ganesh, learned Counsel for the appellant referred to the grounds of appeal and submitted that initial statement given by the appellant on 2.10.99 was retracted by him on 20.10.99 wherein he has stated that the gold jewellery belonged to him. He submitted that the appellant is a Srilankan National and there was no need for him to have taken permission for taking gold jewellery to Sri Lanka inasmuch as there is no prohibition or restriction imposed by the Reserve Bank of India for export of gold jewellery. He has also invited our attention to Section 13 of the Foreign Exchange Regulation Act, 1973 wherein the Reserve Bank of India has permitted any person in India but not a resident therein to take out of India, foreign exchange. He has therefore, submitted that there was no violation of the Foreign Exchange Regulation Act, committed by the appellant. He has also produced a copy of the order of this Tribunal in the case of Halithu

Ibrahim v. CC, (Airport), Chennai vide Final Order No. 172/2002 dated 22.2.2002 wherein in similar circumstances, matter was remanded for reconsideration. He has also invited our attention to the judgment of the Tribunal in the case of Philip Fernandes v. CC, Airport, Mumbai, 2001 (131) ELT 250 (Tri-Mumbai). In that case, though the currency was not declared by the appellant therein, the department itself allowed redemption of the same on payment of fine and penalty, and on appeal, the Tribunal reduced the fine and penalty. He has also referred to similar order passed by the Tribunal in the case of Nasakika Hoshino v. CC, (Airport), Calcutta, 2000 (115) ELT 209. He, therefore, prayed for similar orders.

4. Shri V.T.K. Nayanar, learned JCDR defended the impugned order. He has particularly referred to para 11 of the impugned order wherein the adjudicating authority has dealt with the retraction made by the appellant, and has held that the retraction was an after thought. He has submitted that the facts and circumstances in the order cited by the learned Counsel for the appellants are not similar to the facts in the present case. In the case of Halithu Ibrahim (supra) there was a declaration of the foreign currency by the appellant therein whereas in the present case, there was no such declaration. In the case of Philip Fernandes, the currency was shown to have been obtained legitimately by the appellant therein, in Dubai. In the case of Nasakika Hoshino, foreign currency was not concealed in any secret chamber. On the other hand learned JCDR pressed into service the judgment of the Delhi Bench of the Tribunal in the case of Harinder Pal Singh Shergill v. CC, Mumbai, 2003 (160) ELT 358 (Tri-Del) wherein in similar circumstances option to redeem the foreign currency belonging to someone else was not given. In the circumstances he submitted that the lower authority has passed a well reasoned order and the same should be sustained.

5. We have carefully considered the rival submissions and gone through the case records. Here is a case where the appellant who is a Srilankan National was intercepted by the DRI Officers on 2.10.99 at Chennai when he was bound for Colombo by Indian Airlines Flight No. IC 573. Gold jewellery weighing 2934 grams valued at Rs. 12,49,003 was recovered from his checked-in baggage. Foreign currency equivalent to Indian Rs. 84,539 was also recovered from his person. In his initial statement he has admitted that the jewellery and the currency belonged

to one Liaqat Ali whose whereabouts are not known to him and that he was carrying the goods for a consideration of Rs. 10,000. Later on he retracted his statement in the bail petition and stated that the gold jewellery belonged to him and was purchased for his sister's marriage. Neither the gold jewellery nor the foreign currency was declared by the appellant before the Customs. There was no document to show the licit possession of the goods by the appellant and were therefore, attempted to be smuggled out of the country. The retraction made by the appellant in his statement dated 28.12.99 about the ownership of the gold jewellery can only be taken as an after thought and has been rightly rejected by the lower authority. Therefore, the gold jewellery, the foreign currency and the hair clips and the two polythene bags and the packing tapes have been rightly confiscated. In terms of Section 125 of the Customs Act, 1962, goods which is not prohibited cannot be confiscated absolutely. So far as the foreign currency is concerned, it is admitted by the appellant himself that the same was not declared before the Customs authorities. In terms of the Foreign Exchange Regulation Act, 1973, (Section 13), foreign currency can only be taken out of India by a person who is not a resident in India, provided he has, on arrival in India, declared to the Customs authorities about the fact of bringing in of the foreign currency. As noted above, there was no such declaration made in the present case and an attempt has been made to smuggle out the foreign currency. In the case law cited by the Counsel for the appellant, foreign currency was declared by the appellant therein, before the Customs authorities. In the circumstances, absolute confiscation of the foreign currency as ordered by the lower authority cannot be found fault with and is upheld. So far as the gold jewellery is concerned, gold being only a restricted item and not a prohibited item, while we uphold the order of confiscation, we direct the Commissioner to give an option of redemption to the appellant on payment of fine, the quantum of which will be determined by the Commissioner in accordance with law, after hearing the appellant. Option to redeem the hair clips shall also be given to the appellant and quantum of redemption fine will be determined by the Commissioner in accordance with law. So far as penalty is concerned, imposition of penalty is not seriously contested and we sustain the same in terms of the impugned order. In the result the appeal is disposed of as under: (b) Redemption of Gold jewellery and the Hair clips is allowed on payment of fine, the quantum of

which will be determined by the Commissioner in accordance with law after giving, effective opportunity of hearing to the appellant. Matter remanded for the purpose with direction for passing and within three months.

6. The impugned order Stands modified to the extent indicated above.

Operative portion of this order was pronounced in the open Court on 2.11.2004.

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