

Weizmann Ltd. Vs. Commissioner of Customs

Weizmann Ltd. Vs. Commissioner of Customs

SooperKanoon Citation : sooperkanoon.com/37559

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-29-2004

Reported in : (2005)(181)ELT140Tri(Mum.)bai

Judge : J Balasundaram, Vice-, A M Moheb

Appellant : Weizmann Ltd.

Respondent : Commissioner of Customs

Judgement :

1. The above appeals arising out of the order of the Commissioner of Customs (Preventive & Adjudication), Mumbai order No.CC(P)/SSS/ADJN/32/98, dated 30-10-1998 and Order No.94/2000/CAC/CC/MKB, dated 31-3-2000 are taken up together for disposal.

2. The appellants are a full-fledged Money Changer licence holders given by the Reserve Bank of India under the provisions of Foreign Exchange Regulation Act. In July 1997 the appellants sold foreign exchange to another FFMC known as M/s. Tiruchi Enterprises.

Investigations revealed that M/s. Tiruchi Enterprises has obtained and FFMC licence from the Reserve Bank giving in correct particulars about themselves in so far as their address is concerned. Investigations further revealed that M/s. Tiruchi Enterprises after obtaining foreign exchange from various FFMC's were smuggling the foreign exchange out of the country. The sale proceeds thus obtained were

being deposited in various banks in which M/s. Tiruchi Enterprises holds accounts. The sale proceeds of foreign exchange thus deposited in the various banks were later converted into pay orders in favour of another FFMC. These pay orders were presented to the FFMC to obtain foreign exchange. In the present case M/s. Tiruchi Enterprises deposited sale proceeds of foreign currency smuggled out of the country in Pan-jab and Maharashtra Co-Operative Bank Ltd., Mumbai to the tune of Rs. 9,13,750/- and obtained a pay order No. 252, dated 11-7-1997 in favour of the appellants. This pay order was presented to the appellants who thereupon issued foreign currency equivalent to the representative of M/s. Tiruchi Enterprises. M/s. Tiruchi Enterprises had obtained another pay order No. KH/4/2350, dated 11-7-1997 for Rs. 16,44,750/- of Jankalyan Sahakari Bank Ltd. Khar Mumbai favouring the appellant. On production of this pay order the appellant tendered foreign exchange equivalent to the representative of the appellant.

3. As stated earlier investigation into the affairs of M/s. Tiruchi Enterprises revealed that the monies deposited by them in the above said banks for obtaining pay orders represented sale proceeds of smuggled goods (foreign currency). The DRI officers who were investigating the case against M/s. Tiruchi Enterprises contacted the above said two banks and found that M/s. Tiruchi Enterprises obtained the two pay orders mentioned above after depositing the sale proceeds.

The officers found that monies representative the two pay orders were still lying with the above said banks in their pay order account. Since the amounts pertaining to pay orders were still lying in the issuing bank's account, the officers seized this amount and instructed the bank to remit the amounts mentioned in the pay orders in favour of Collector of Customs, Mumbai. The Banks did so. Latter a show cause notice was issued to various persons involved in the racket of smuggling foreign exchange, the appellant, the issuing banks and various others asking them to show cause why penal action should not be taken against the various persons and why the sale proceeds should not be confiscated under Section 121 of the Customs Act. The present appellants are one of the respondents to the show cause notice.

4. The Commissioner in the adjudication order confiscated Rs. 9,13,750/- covered by pay order No. 252 issued by BMC Bank Ltd., Mumbai in favour of the appellant and Rs. 16,44,750/- covered by pay order No.KH/4/2550, dated 11-7-1997 issued by Jankalyan Sahakari Bank Ltd. in favour of the appellant under Section 121 of the Customs Act. He did not impose any penalty on the appellants. The present appeal is against the confiscation of the above said amounts. The appellants' contention is that these amounts which belonged to them cannot be confiscated under Section 121 of the Customs Act, as the amounts did not represent sale proceeds of smuggled goods but represent the sale proceeds to foreign exchange sold by them to M/s. Tiruchi Enterprises legally.

6. The appellants produced evidence to show that they have sold foreign exchange in lieu of the amounts as shown in the pay orders. Their contention is that the foreign exchange sold by them was not smuggled into country but was obtained from the Reserve Bank. As licenced money changers they are authorised to sell foreign exchange and in that capacity only they have transacted with the other money changers M/s.

Tiruchi Enterprises. Even though the amounts due to them are lying in the pay order accounts of the issuing banks the money really belonged to them and so it should be released to them. It is also contended that a show cause notice is issued to them asking them to explain as to why the amounts seized from the issuing banks should not be confiscated. It has been done so because the department realised that they are the owners of these amounts even though the amounts are seized from the bank which issued the pay orders in their favour. Since these amounts represented a genuine transaction they cannot be considered to be sale proceeds of smuggled goods. They cannot be punished for acts of commission of M/s. Tiruchi Enterprises.

7. The Id. DR argued that the amounts seized from the banks who issued the pay orders represented sale proceeds of smuggled goods and are therefore liable to confiscation under Section 121 of the Customs Act.

He argued that simply because the sale proceeds are deposited in a bank and pay orders are obtained the proceeds do not cease to be sale proceeds. They are

liable to confiscations even in the hands of the banks.

8. We have heard the rival contentions and perused the records. The issue for decision is whether the pay orders which were still in the issuing banks' pay order account are liable to confiscation under Section 121 of the Customs Act. An exactly identical issue was dealt with by the Tribunal in the case of Wall Street Finance Ltd. v. Commissioner of Customs (Prev.), Mumbai [2002 (147) E.L.T. 112 (Tri. - Mumbai)]. The issue for consideration there was whether the FFMC (Wall Street Finance Ltd.) can claim the amounts seized from some bank saying that such amounts represented sale proceeds of foreign currency sold by them. The Tribunal held that bank being the owner of money the FFMC does not have the locus standi to file the appeals. The Tribunal all the same entertained the appeal because a penalty was imposed on the appellant in that case by the Commissioner. So while holding that Wall Street Finance Ltd. has no locus standi to claim the money seized from a bank, the Tribunal entertain the appeal only because a penalty was imposed on the appellant. The Tribunal did not order the release of the pay orders to the appellant before him. A similar view was taken by the Tribunal in the case of R.R. Sen & Brothers v. Commissioner of Customs, Mumbai [2001 (128) E.L.T. 187 (Tri. - Del.)]. In this case during the course of investigation the DRI officers directed Jan Kalyan Sahakari Bank not to make payment of Rs. 47,58,000/- covered by two demand drafts issued by it in favour of FFMC. The Tribunal held that the appellant before them have no locus standi to challenge the confiscation of the above said amounts. The Tribunal upheld the confiscation of Indian Currency under Section 121 of the Customs Act.

These two decisions clearly establish the legal position as to whether the present appellant can lay a claim over the currency seized from the above mentioned banks on the plea that the pay orders were in their favour and have sold foreign exchange against them. The only claimant for the currency seized from the two banks could be either the banks themselves or the persons who deposited those amounts in the banks.

9. In regard to the appellants' contention that they were issued with the show cause notice under Section 124 of the Customs Act, asking them to explain why

the currency seized from the two banks should not be confiscated and therefore the department recognized the fact of their ownership, we observe that the show cause notice does not anywhere ask the appellants to show cause why the currency should not be confiscated. Several allegations were made in the show cause notice against several people including the banks who issued to pay order. The appellants were asked to show cause why penalty should not be imposed on them. The appellants cannot argue that they were asked to show cause about the money which is not seized from their accounts. The Commissioner did not impose any penalty on them. Following the ratio of the above said decisions we hold that the present appellants have no claim over the money seized from the two banks. We observe that in the case of *B.P. Nayak v. Commissioner of Customs (Prev.)*, Mumbai, 2001 (136) E.L.T. 604 (Tri. - Mumbai) the Tribunal held a different view.

The Tribunal held on B.P. Nayak's case that even the amounts lying in the pay order account of the issuing bank represented sale proceeds of foreign currency legally sold by FFMC and therefore cannot be confiscated under Section 121 of the Customs Act. This decision therefore is in variance with the decisions contained in *Wall Street Finance* and *R.R. Sen and Brothers* cited *Supra*. Since there are conflicting decisions of the coordinate Benches of the Tribunal, a Larger Bench needs to be constituted to determine the correct legal position.

10. The facts in these appeals are identical to the ones in C/29/99.

For the reasons given above these appeals also need to be required to a Larger Bench for determining the correct legal position.

11. Thus all the three appeals may be referred to a Larger Bench to determine whether pay orders obtained by tendering proceeds of smuggled goods lying in the account of pay order issuing Bank are liable to confiscation under Section 121 of the Customs Act and whether the FFMC have any claim over the amounts involved in the pay orders even though such amounts are not transferred to the FFMCs' accounts.