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

Decided On : Oct-08-1987

Reported in : (1988)LC94Tri(Chennai)

Appellant : Malar

Respondent : Collector of Customs and Central

Judgement :

1. C/Stay/524/87/MAS. - This is an application for waiver of prior deposit of penalty of Rs. 2,000/-imposed on the petitioner under the impugned order of the Additional Collector of Customs, Tiruchy, dated 1-6-1987.
2. Since we propose to dispose of the appeal itself today with the consent of the parties, we grant waiver of prior deposit of the penalty pending disposal of the appeal today.
3. C/Appeal No. 481/87. - As stated above, the appeal is directed against the order of the Additional Collector of Customs & Central Excise, Tiruchy, dated 1-6-1987 under which he has confiscated absolutely Indian currency of Rs. 55,050/- under Section 121 of the Customs Act, 1962 and imposed a penalty of Rs. 2,000/- under Section 112 of the Customs Act, 1962, the 'Act' for short.
4. S/Shri Rajagopal and Saleemkhan, learned counsels for the appellant, submitted that there is absolutely no ray of evidence in the entire case records to hold that the currency under absolute confiscation represented the sale proceeds

of contraband goods. The learned counsel also assailed the impugned order contending that prior to the seizure of the currency there is hardly no evidence on record to indicate that the Customs Officer had reason to believe that the currency in question represented the sale proceeds of contraband goods so as to clothe the Customs authority with jurisdiction to seize the same under Section 110 of the Act. The learned counsel also produced a communication dated 5-3-1987 signed by the Assistant Collector, which is to the effect that he had dropped the proceedings against the appellant in respect of the seizure of the currency in question by ordering release of the same.

The learned counsel expressed a surprise as to how in the teeth of such an order by a competent authority viz. the Assistant Collector the Additional Collector of Customs could assume jurisdiction and pass the impugned order.

5. The learned Senior D.R., Shri Bhatia, with characteristic fairness conceded that there is absolutely no evidence on record to indicate that the currency in question represented the sale proceeds of contraband goods. On going through the communication of the Assistant Collector referred to above the learned Senior D.R. submitted that he is not in a position to state anything with reference to the same as he does not have any specific instruction in this regard.

6. We have carefully gone through the entire case records. We should confess, we do not find an iota of evidence against the appellant to hold that the currency of Rs. 55,050/- seized from her represented the sale proceeds of contraband goods. We also do not find any material on record to show that the Customs authorities either entertained a reasonable belief or could have had reasonable belief to effect seizure of the same in terms of Section 110 of the Act. The mere possession of currency and an unsatisfactory explanation with reference to acquisition of the same may possibly engender suspicion in the mind of an authority. But suspicion however grave it might be, cannot take the place of proof. In this view of the matter we set aside the impugned order appealed against and allow the appeal.