

G.P. Puri Vs. Commissioner of Customs

G.P. Puri Vs. Commissioner of Customs

SooperKanoon Citation : sooperkanoon.com/40289

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-19-2005

Judge : S Kang, Vice-

Appellant : G.P. Puri

Respondent : Commissioner of Customs

Judgement :

2. Both these appeals have been filed by S/Sh. G.P. Puri & Mahender Prakash against the common impugned order. Therefore, these are being taken up together for disposal.

3. Brief facts of the case are that on 16-9-93, the premises belonging to Shri G.P. Puri, were searched by the Customs Officers and Sh.

Mahender Prakash was found sitting over there and Indian currency to the tune of Rupees 1,37,880/- was recovered from the premises. Shri Mahender Prakash gave a statement to the Customs Officers stating that this currency was sale proceeds of smuggled gold, hence on the reasonable belief that this currency was liable to confiscation, the Customs Officers seized the currency. Show cause notice was issued to the appellants confiscating the currency and imposed the penalty on S/Shri Mahender Prakash and G.P. Puri.

4. The contention of the appellants is that Shri G.P. Puri was not present at the spot and immediately after seizure on 7-10-93, he filed an application for claiming

the currency along with documentary proofs such as copies of account books. Chartered Accountant's Certificate, etc. Shri Mohinder Prakash filed an application in the Court on the ground that he was beaten up by the officers and he was nothing to do with the smuggled gold or the seized currency. The appellants also relied upon the following decision of the Tribunal:(CEGAT) Shri Raj Kumar Agarwal, Kanpur v. C.C. Lucknow(CEGAT) Lal Saheb Yadav and Anr. v. C.C. (Prev.) W.B.(CEGAT) S.C. Dey and B.N. Sil & Co. v. C.C. (Prev.), Calcutta to submit that the currency is liable to seizure on the ground of sales proceeds of the smuggled goods on the following; conditions: (c) The sale must be by a person having knowledge or reasons to believe that the gold was of the smuggled origin.

(d) The seller and purchaser and the quantity of gold must be established by the Customs Authority.

5. The contention is that there must be concrete evidence regarding quantity of smuggled gold and identity of a person to whom the gold was sold to confiscate the Indian currency are sale proceed of smuggled goods. Therefore, the confiscation is not sustainable.

6. The contention of the Revenue is that the circumstances of the case are such that it leads to the threat. The office premises were locked from inside and on repeated requests, the appellants had not opened the premises. Thereafter, police was called and Customs Officers threatened to break open the door. Then the appellants opened the door and search was conducted. Shri Mohinder Prakash, who was present along with Puran Ram stated that the currency was sale proceeds of smuggled gold. In these circumstances, the confiscation was rightly made and appellants were liable to personal penalty.

7. In the present case, the appellants are challenging the confiscation of Indian currency of Rupees 1,37,880/- which was seized from the premises of Shri G.P. Puri. At the time of seizure, Mohinder Prakash was present who gave a statement that these goods related to the sale proceeds of smuggled goods. Shri Mohinder Prakash filed criminal complaint in the Court against the Customs Officers. In the complaint it was specifically mentioned that he was threatened and was beaten up to obtain the statement. The statement was made under threat and he had nothing

to do with the smuggled gold. Further, I find that Shri G.P.Puri filed an application for claiming the currency seized on 7-10-93 supported by a Certificate of Chartered Accountant and copies of their books of accounts. Appellants also relied upon the above mentioned decisions of the Tribunal whereby the Tribunal held that the following conditions should be satisfied before taking any action under Section 121 of the Customs Act on the ground that the currency was sale proceeds of smuggled gold : (c) The sale must be by a person having knowledge or reasons to believe that the gold was of the smuggled origin & (d) The seller and purchaser and the quantity of gold must be established by the Customs Authority.

8. I find that there is no evidence to show quantity of smuggled gold and identity of a person to whom the gold was sold as held by the Tribunal in the above decisions. In these circumstances and in view of the above decisions of the Tribunal, Confiscation of the Indian currency is set aside and personal penalties on the appellants are also set aside and the appeals are allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com