

Sharad Chandra Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-28-2005

Judge : S Kang, Vice

Appellant : Sharad Chandra

Respondent : Cc

Judgement :

2. The appellant filed this appeal against the impugned order whereby Rs. One lakh under Section 112 of Customs Act was imposed on the appellant.

3. The brief facts of the case are that on 16.12.95, the Revenue officers at Jhansi railway station recovered 1309 gms. of gold biscuits of foreign marking from the possession of Sh. Hari Kishan Soni. Shri Hari Kishan Soni in his statement submitted that he was carrier of Sh.

Satish Kumar Verma and the gold in question was purchased from appellant. As the follow up action the residential premises of the appellant was searched but nothing recovered. The adjudicating authority confiscated the gold and imposed penalty of Rs. One lakh each on Sh. Hari Kishan Soni and on the present appellant.

4. The contention of the appellant is that there is no evidence on record to show that the appellant is dealing in smuggled gold. There is only one statement of Sh. Hari Kishan Soni whose possession the gold was recovered. There is no other

corroborative evidence which implicate the appellant even Sh. Hari Kishan Soni for whom the gold is being carried out by Sh. Hari Kishan Soni. On his statement nowhere named the appellant. The appellant also pleaded that the Commissioner (Appeals) in the appeal filed by Sh. Hari Kishan Soni reduced the penalty to Rs.5935/-. The contention is that penalty is not sustainable on the appellant.

5. The contention of the Revenue is that Sh. Hari Kishan Soni at the time of recovery named the appellant from whom he is purchased the gold. There is no evidence on record to show that Sh. Hari Kishan Soni inimical to the appellant. The contention is that as the appellant sold this smuggled gold, therefore, these are liable for penalty 6. In this case 1309 gms, of gold was recovered from Sh. Hari Kishan Soni and in his statement he specifically named the appellant from whom he has purchased the gold. As Shri Hari Kishan Soni is implicating self as well as the appellant, the statement of Sh. Hari Kishan Soni under Section 108 is a material piece of evidence against the appellant as held by the Hon'ble Supreme Court on the case of Naresh J. Sukhawani v. Union of India decision of the Hon'ble Supreme Court the appellant is liable for penal action. Taking into the facts and circumstances of the case and the fact that in the case of Sh. Hari Kishan Soni the amount of penalty is reduced to Rs.5935/- by the Commissioner (Appeals) and this order was not challenged by the appellant, Therefore, the penalty is reduced to Rs.5000/- on the present appellant, Otherwise order is upheld. The appeal is disposed of as indicated above.

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