

Gopal Chaddha Vs. Cegat

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Court : Allahabad

Decided On : Jan-07-2000

Reported in : 2000(70)ECC607; 2000(118)ELT555(All)

Judge : P.K. Jain, J.

Acts : [Customs Act, 1962](#) - Sections 110(2), 112(2), 124, 125, 125(1) 129 and 129B(2)

Appeal No. : Civil Misc. Writ Petition No. 411 of 1997

Appellant : Gopal Chaddha

Respondent : Cegat

Advocate for Def. : Shishir Kumar, Adv.

Advocate for Pet/Ap. : A.P. Mathur, Adv.

Judgement :
ORDER

P.K. Jain, J.

1. The petitioner No. 2 Sri Ram Sumer was apprehended by Preventive Officers of the Customs Department, Gorakhpur on 13-7-1990. Some pieces of gold and three hand-written slips were seized from his possession. 2 slips related to rate of

gold whereas 3rd related to the value of gold. The statements of petitioner No. 2 were recorded by the authorities of the department and he disclosed that the gold was purchased from one Prem Sarraf, Gorakhpur who had melted the foreign biscuits in presence of the petitioner No. 2. Subsequently petitioner No. 2 retracted his statement stating that the gold seized from his possession was obtained out of the old ornaments of the customers which were received by his employer i.e. petitioner No. 1 for manufacturing new ornaments. The Officer thereafter raided the remises of petitioner No. 1 on 15-7-1990. The statement of Sri Gopal Chaddha petitioner No. 1 was recorded on 23-8-1990 who corroborated the second statement of the petitioner No. 2. However, petitioners were served show cause notice, dated 9-1-1991 after expiry of six months i.e. on 18-1-1991 in which allegations of contravention of the provisions of Customs Act were made and they were asked to show cause as to why the gold and currency seized from petitioner No. 2 be not confiscated and they may not be penalised for contravention of the provision of the [Customs Act, 1962](#). The petitioners, however, applied for release of seized goods in terms of Section 112(2) of the [Customs Act, 1962](#). On consideration of the show cause filed by the petitioners the Assistant Commissioner respondent No. 2 passed order as contained in Annexure-3 to the writ petition confiscating the gold and currency and further imposing penalty of Rs. 10,000/- and Rs. 2,000/- penalty on petitioner Nos. 1 and 2 under Section 112 of the [Customs Act, 1962](#). The petitioners preferred appeal before the Collector of Customs (Appeals), Allahabad who affirmed the order of the Assistant Commissioner. Thereafter the petitioners approached the respondent No. 1 by way of appeals. The Tribunal rejected the appeals upholding the order passed by the lower authorities. Thereafter the petitioners filed Civil Misc. Writ Petition No. 1051 of 1994. The writ petition was allowed and order of the Tribunal was set aside with a direction to re-hear the appeal and decide it according to law. Thereafter the Tribunal again decided the appeal holding that the confiscation of the gold was justified. It, however, allowed the appeal so far as the confiscation of the currency seized from the possession of petitioner No. 2 was concerned. The penalty order was also affirmed by the Tribunal. Subsequently by Misc. Orders, dated 20-10-1998 as contained in Annexure-10 to the writ petition the Tribunal modified its order, dated 21-2-1997 and an option was given to the petitioners to

take delivery of the seized goods on payment of fine of Rs. 2,00,000/- in view of the provisions contained in Section 129B(2) of the Customs Act.

2. Aggreived by the orders of the Tribunal, the petitioners have filed the present writ petition praying that by issuing a writ of certiorari order, dated 20-10-1998 passed by respondent No. 1 be quashed and mandamus directing the Assistant Commissioner (Customs), Gorakhpur be issued to release the seized six pieces of gold forthwith.

3. On behalf of the respondents counter affidavit has been filed in which the orders passed by Tribunal are justified.

4. Sri A.P. Mathur, learned Counsel for the petitioners had made two fold submissions. One is that notice was served beyond six months as provided under Section 110(2) of the Customs Act. Therefore, the seized goods were liable to be returned to the petitioners. The second argument of Sri A.P. Mathur is that under Section 125 of the Act penalty or fine in lieu of confiscation shall not exceed the market price of the goods confiscated less duty chargeable thereon. In the instant case, he submits that the market price of the goods was Rs. 1,84,000 and odd duty chargeable was at the rate of 40 per cent. His submission is that the fine imposed in lieu of the confiscation is thus excessive not according to law.

5. Sri Shishir Kumar, learned (sic) counsel appearing for the respondent, however, submits that the Tribunal has given cogent reasons for rejecting the first contention of the learned counsel for the petitioners. It is further submitted that proceedings under Section 124 of the Customs Act are independent and distinct and have no concern with the release of the goods in favour of the person concerned under Section 110(2) of the Act As regards the second contention it is submitted that proper order was passed by the Tribunal after application for release of the goods on payment of penalty, fine in lieu of confiscation was moved under Section 125 of the Act.

6. Before the Tribunal the petitioners had canvassed that the notice under Section 124(a) of the Act was not served within six months of the seizure of the goods and hence the goods were liable to be returned to the possession of the person from

whom they were seized in view of, the provisions contained under Section 110(2) of the Act. Such claim of the petitioners has been dealt with by the Tribunal at length. The assertion of the petitioners that the notice was served beyond the period of six months from the date of seizure was accepted by the Tribunal but it took the view that the provisions of Section 124(a) of the Act are distinct and independent of the provisions of Section 110(2) of the Act. The Tribunal observed in its order that, 'the legal consequences of the Customs Department in not giving the notice under Section 124(a) of the [Customs Act, 1962](#) within the time specified in Section 110(2) (ibid) and the scope of the said two provisions have been conclusively settled by Hon'ble Supreme Court in Harbans Lal v. Collector of Central Excise and Customs - AIR 1993 SC 2487 the Tribunal after extracting the relevant portions of the judgment in its order held that there is nothing in the language of the Section 110 of the Act to indicate that a fetter or limitation is imposed upon the power of the competent authority to initiate proceedings under Section 129 of the Act and that no restriction or limitation or even a fetter is imposed as regard the time when the proceedings may be initiated by issue of a show cause. The legal position is not challenged by the learned counsel for the petitioners. Admittedly the proceedings for confiscation were initiated which were entirely concluded and the goods were confiscated. Once confiscation order is passed and that has become final, the goods cannot be released under Section 110(2) for non-giving of notice within six months from the date of seizure under Section 124(A) of the Act. Therefore there is no substance (sic) in the first submission of the learned counsel for the petitioners.

7. The second submission of the learned counsel for the petitioners is that Section 125 of the Act provides for an option to the person to pay fine in lieu of the confiscation of the goods. The quantum of fine has to be fixed in accordance with the provisions contained under Section 125 of the Act. It is submitted that the Tribunal by its order, dated 20-10-1998 partly allowed the correction application and modified its earlier order by giving an option to Ram Sumer, petitioner No. 2 from whom the gold was seized for release of the goods on payment of Rs. 2,00,000/- in lieu of confiscation of gold. It is submitted that the Tribunal has not considered the provisions to the proviso of Sub-section (1) of Section 125 of the Act. His submission is that according to the proviso the amount of fine shall not

exceed the market price of the goods confiscated less in the case of imported goods the duty chargeable thereon. There is substance in the submission of Sri A.P. Mathur, learned counsel for the petitioners. In the instant case the finding is that the gold biscuits having foreign markings were melted and the gold by melting such gold biscuits was seized from possession of the petitioner, Ram Sumer. There cannot be dispute that such gold was chargeable to duty if it was imported. The value of the gold found in the possession of the petitioner No. 2, Ram Sumer was admittedly Rs. 1,84,155/-. At the relevant time duty chargeable was 40 per cent. The amount of duty chargeable on goods would be around Rs. 73,662/-. If this amount is deducted from the value of the gold the maximum amount of fine which could be imposed would come to Rs. 1,10,483/-. Considering the facts and circumstances of this case in my view the fine of Rs. 1,00,000/- would be justified. To this extent, therefore the petition deserves to be allowed.

8. In view of the discussions made above, the petition is partly allowed. The order of the Tribunal, dated 21-2-1997 as modified by the Tribunal by order, dated 20-10-1998 is quashed so far as it relates to imposing of fine of Rs. 2,00,000/- in lieu of confiscation and it is directed that the goods shall be released to the petitioner No. 2 Ram Sumer on payment of fine of Rs. 1,00,000/- in lieu of confiscation.

9. No order as to costs of this petition.