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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-15-1990

Reported in : (1991)LC757Tri(Delhi)

Appellant : Mohan Anand

Respondent : Collector of Customs

Judgement :
1.1 Acting on information, the residential premises of the appellant were searched on 16-9-1987 after obtaining the necessary search authorisation. As a result of search, 46 cans of beer, 62 bottles of whisky and 590 video cassettes (recorded), all of foreign origin, were recovered. Since the wife of the appellant, who was present during the search, could not produce any evidence of the legal import or acquisition of the said goods, they were seized under Section 110 of the Customs Act.

1.2 Shri Mohan Anand, the appellant after his return from abroad, in his statement dated 29-9-1987 recorded under Section 108 of the Customs Act, while admitting the recovery of the above goods from his premises collectively valued at Rs. 79,810/- (OF value Rs. 26,440/-) stated that he had procured these goods while he and his wife visited abroad in 95 trips since 1980. He and his wife had been bringing the said goods in the bona fide free baggage allowance for which no receipts were made by the Customs authorities. In some cases duty paid receipts were also produced showing payment of duty on 6 bottles of whisky and 22 video cassettes.

1.3 A show cause notice was issued to the appellant as to why the seized goods be not confiscated under Sections lll(d) and lll(p) of the Customs Act and a penalty be not imposed upon him.

1.4 In his reply, he submitted that the very seizure of goods was wrong. These goods are freely allowed under the Baggage Rules. These were found in the residential premises and not in any business premises and that he was not dealing in any of those goods. 95 trips abroad by him and his wife are admitted. Both he and his wife were the Directors of Dior International, Government of India's recognised Export House dealing in export of ready-made garments etc. Usually on their return, they brought a bottle of whisky/beer can or video cassette which were very well within the free baggage allowance permitted to a passenger. In a few cases, they even paid duty. He also stated that provisions of Section lll(p) did not apply because the goods were recovered from a residential premises and therefore, the provisions of Section 11G would operate.

1.5 On adjudication, the adjudicating authority has confiscated 46 cans of beer and 62 bottles of whisky holding as follows :- "While video cassettes are durable articles which can be retained for years together, whisky is a consumable item and the human tendency is to consume it as quickly as possible. And in any case, it cannot be expected to be retained unused for 3 to 6 years".

Again in a latter para, the adjudicating authority has observed that "it is neither believable nor legally acceptable (due to absence of documents) that 62 bottles of whisky and 46 cans of beer were retained in stock for so many years. This premises will hold good, if not for the few bottles of whisky or beer imported in 1987, at least for those which were imported prior to 1987. The noticee has nothing but his statement only to rely upon. This is not enough for notified goods or consumable liquor particularly when a large number of bottles and cans of liquor are stored, which casts a special responsibility on the possessor to account for and produce valid evidence for licit import".

The adjudicating authority goes on to add, "For the said reasons it cannot be accepted that a few of the bottles/cans of liquors seized were imported as baggage in 1987. After all a statement cannot at the same time (be) true and false;

if the statement in respect of liquor and beer that could be claimed to have been imported prior to 1987 is not correct, the statement in respect of the liquor and beer that could be claimed to have been imported in 1987 cannot also be correct. For notified goods the law is strict and there cannot be any question of benefit of doubt when the quantity recoverd is large. The noticee has failed to establish legal import of the seized whisky and beer". A penalty of Rs. 1000/- has also been imposed on the appellant.

2.1 The appellant's learned advocate, on the other hand, has pleaded that the confiscation of 'whisky' and 'beer' is based purely on conjecture and surmises about human tendency to consume them quickly.

The department has admitted 95 trips made by the appellant and his wife and the permission to bring a bottle of liquor or a can of beer as part of the free baggage allowance. Sometimes the duty has also been paid on excess liquor brought by him or his wife as part of the baggage. Once this fact is admitted, the appellant had discharged his onus of proving the legal import of the liquor in question. It is for the department to rebut this evidence with some cogent evidence and not merely by surmises and conjectures of human tendency. It has, therefore, been urged that the impugned order be quashed.

3.1 I have carefully considered the pleas advanced on both sides.

Detailed reasoning of the adjudicating authority leading to confiscation of the liquor has been already set out above. I notice that his order rests on one basic assumption that a human being has a tendency to consume liquor quickly. He is not prone to keep it for long. In my view it is not a fair assumption. It may be true in respect of some persons placed in some peculiar circumstances. But to assume a uniform human conduct for all human beings in a given set of circumstances is to belie diversity and complexity of human character and conduct. For example, while facing an impending danger, say a wild beast in a jungle, someone may try to run away, one may lie low and still, one may climb a tree and one may take courage in both his hands and face the beast and so on. It cannot be said that anyone conduct is less human than the other.

3.2 Coming to back to the topic on liquor, there is an adage, "Older the wine, better it is!". It is also not unknown that some people would like to keep their cellars well-stocked with various brands of liquor of varying ages.

3.3 I am, therefore, of the view that it is too fragile a foundation of the department's case when it says that human tendency is to consume the liquor quickly and therefore, the bottles and cans of liquor seized cannot be correlated to those imported in earlier years.

3.4 Another error in law that the adjudicating authority has made is that if part of the statement is held to be incorrect, the other part must also be incorrect. To put it in other words, the adjudicating authority's view is that a person, while making a statement is either completely truthful or he is a complete liar. This, is in my view, is not a reality of life. Besides this incorrectness of one part of the statement has been inferred by the adjudicating authority on the basis of the aforesaid dubious assumption of normal human tendency to consume liquor quickly. Therefore, his conclusion regarding the other part of the statement being incorrect is also bound to be wrong on his own logic.

3.5 Further, I do not think it is a correct way of appreciating a statement on record. A statement is one piece of evidence. It has to be read as a whole. It has to be weighed in the light of other evidence - circumstantial and direct - available on record. Adjudicating authority's inference of the liquor bottles/cans being illegally imported is based on (i) human tendency to consume liquor quickly, (ii) the quantity of liquor seized. Appellant's contention of its legal importation is based on (i) large number of trips abroad by him and his wife (ii) general permission under the Baggage Rules to bring a bottle/can of liquor as part of free baggage allowance, (iii) some baggage receipts showing payment of duty on excess quantity of liquor imported, (iv) the goods having been recovered from a residential premises, (v) the absence of any allegation that the appellant is dealing in those goods.

3.6 I have already held that assumption by the adjudicating authority regarding the human tendency is not correct. Quantity of liquor seized, another circumstances, is explained by the large number of visits abroad by the appellant and his wife.

Overall explanation given by the appellant is plausible and acceptable. Weight of evidence in this case, in my view, is in favour of the appellant.

4. In view of the foregoing discussion, confiscation of 46 cans of beer and 62 bottles of whisky is set aside. These are ordered to be released. Consequently, the penalty of Rs. 1000/- imposed on the appellant is set aside. In short, the impugned order is quashed with consequential relief to the appellant.