**TajuddIn Vs. Collector of Customs**

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**SooperKanoon Citation** : sooperkanoon.com/6205

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

**Decided On :** Jan-17-1991

**Reported in** : (1991)LC148Tri(Chennai)

**Appellant** : Tajuddin

**Respondent** : Collector of Customs

**Judgement** :

1. This appeal is directed against the order of the Additional Collector of Customs, Madras dated 6-3-1989 imposing a fine of Rs. 5,000/- in lieu of confiscation of goods worth about Rs. 12,150/- consisting of crockeries valued Rs. 8,800/-; toilet requisites valued at Rs. 500/-; wearing apparels valued at Rs. 800/- besides miscellaneous goods valued at Rs. 2,050/- detailed in the impugned order and absolutely confiscating goods such as crockery, toilet requisites, wearing apparels, miscellaneous goods all valued at Rs. 11,462/- under Section 111(p) of the Customs Act, 1962 ('the Act' for short) besides a penalty of Rs. 5000/- under Section 112 of the Act. On 15-2-1988 the Customs officers searched the appellant's shop under the name and style "Estate Departments Stores' at Santhome High Road, Madras and found him in possession of various goods such as cosmetics, toilet requisites, crockeries etc. of foreign origin along with various other goods of Indian origin kept in the Departmental store. Since the authorities had reason to believe that the goods were kept in contravention of law and in violation of the provisions of the Baggage (Conditions of Exemption) Rules, 1975, they effected the seizure of the same. The appellant gave a statement on 15-2-

1988 that the goods in question were brought as baggage goods - some duty-free and some on payment of duty by himself and his family members who were going frequently abroad. The appellant produced baggage receipts and also offered to produce more receipts to cover the entire goods which he ultimately produced. It is in these circumstances after further investigation, proceedings were instituted against the appellant resulting in the impugned order now appealed against. In the impugned order the adjudicating authority has released the goods worth about Rs. 11,355/- consisting of crockery and glassware. So far as the confiscation of the goods valued at Rs. 12,150/- consisting of crockery, wearing apparels, toilet requisites etc. on the ground that they were notified goods kept in violation of Chapter IVA and releasing the same on payment of a fine of Rs. 5000/-, the appellant is not contesting the appeal. The appellant is contesting only the absolute confiscation of the goods valued at Rs. 11,462/- detailed in SI. No.(C) in para 4 in the order portion of the impugned order.

2. S/Shri S. Sabapathi and M.S. Vaidyanathan, Ld. consultants for the appellant submitted that the goods absolutely confiscated and valued at Rs. 11,462/- consist of crockery, toilet requisites, wearing apparels and miscellaneous goods and the confiscation is on the ground that they were notified goods under Chap. IVA and confiscable under Section 111(p) of the Act. It was contended that this finding of the adjudicating authority is not sustainable on facts or in law. It was urged that out of goods valued Rs. 11,462/- only goods worth Rs. 1,300/- are notified and the rest valued at Rs. 10,162/- are non-notified goods which fact, according to the Ld. consultants, has been lost sight by the Ld. adjudicating authority. So far as the non-notified goods are concerned it was urged that the onus is on the department to prove that they are contraband goods and in the present case evidence was produced before the authorities for the number of trips the appellant, his wife, son, daughter, daughter-in-law have gone abroad between the period 1-1-1987 to 15-12-1988. It was urged that all the family members are also partners in the departmental stores dealing in provisions (grocery). It was submitted with a view to boost the sales in the departmental store, following the pattern obtaining in foreign countries, the appellant spent Rs. 32,095/- towards advertisements in the various dailies, All India Radio etc. advertising the gift scheme namely that whoever purchased the goods at a particular value would be given a gift of a small foreign

article. It was, therefore, urged that the goods were not kept for sale and it was merely intended to be given as gift to buyers of Indian goods for a value as evidenced by the advertisements in the press as well as in the All India Radio and other journals. The Learned Consultants further submitted that the reasoning of the adjudicating authority in invoking Section 11G of the Import (Control) Order, 1955 is also not correct since the same is not applicable to the goods which have been permitted to be cleared duty-free under the Baggage Rules as baggage items. It was, therefore, submitted that the order of confiscation of non-notified goods and that too by invoking Section 11G of the Import (Control) Order, 1955 is not legally sustainable. So far as the notified goods valued at Rs. 10,3007-are concerned, the appellant submitted that technically an offence could be said to be made out under Chapter IVA of the Customs Act, 1962 and pleaded for release of the same on a token fine. In this context it was fervently urged that in respect of the fine of Rs. 5000/- in lieu of confiscation of the notified goods under Chapter IVA valued at Rs. 12,1507- only goods of small value are notified goods such as toilet requisites etc. while the rest of the goods are non-notified goods.

3. Shri P. Sundararaju, Ld. SDR contended that even though goods brought under baggage would be permissible for being gifted, a gift can normally be understood only as one given out of love and affection between relatives and friends and a gift cannot be given with a commercial motive to boost one's trade. Regarding the plea that except the goods worth Rs. 1,300/- (out of the goods valued Rs. 11,462, viz.

goods under absolute confiscation), the rest are non-notified goods and so not confiscable as contraband goods. The Ld. SDR urged the plea about the applicability of the conditions of Baggage Rules was not specifically pleaded.

4. I have carefully considered the submissions made before me. The fine in lieu of confiscation of Rs. 5000/- on goods valued at Rs. 12,1507- for violation of Chapter IVA of the Customs Act, 1962 is not contested.

The only issue of contention is with reference to the absolute confiscation of the goods valued at Rs. 11,4627- under Section 111(p) of the Act. I have gone through the list of the goods concerned in this category and the value of cosmetics and toileteries which are notified goods would come to Rs. 1,3007- as per the value adopted in the mahazar. Rest of the goods are non-notified goods which would come to Rs. 10,162/-. The notified goods namely, cosmetics and toileteries are detailed in the mahazar at Sl. Nos. 33 to 44. In respect of non-notified goods it is a settled proposition of Jaw that the onus is on the Department to show that the goods are contraband goods; the Tribunal in a number of cases in similar situation have highlighted this proposition and the same has been followed in adjudication proceedings by adjudicating authorities also. I may usefully refer to a few rulings in this context in support of the plea of the appellant in this regard. The North Regional Bench in the case of S.N. Sarkar and Abdul Latif v. Collr. of C. Ex., New Delhi' reported in 1985 (22) ELT 186 (Tri.) has held that, "When the goods are neither notified under Section 123 nor under Chapter IVA of the Customs Act, 1962, presumption under Section 123 cannot be invoked that the goods must have been smuggled. The fact that goods are of foreign origin, have been imported and seized on specific information do not justify the presumption as to their smuggled character. The burden to prove their smuggled character lies on the Customs which has not been discharged. Confiscation thereof is, therefore, not justified." The same view is reiterated in another ruling of the Bench in the case of 'Hindustan Electronics v. Collr. of Customs and Central Excise, Chandigarh', reported in 1987 (31) ELT 252 (Tribunal). The West Regional Bench also taken a similar view in similar circumstances in the case of 'Arvinder Singh Kocher v. Collector of Customs, Bombay' -reported in 1986 (26) ELT 792 (Tribunal) and also in the case of Manoharlal T. Punjabi v. Addl. Collector of Customs (P)' 1985 (21) ELT 154. A chart is produced before me from the passports of the appellant, his wife, son, daughter and daughter-in-law for the period 1-1-1987 to 15-12-1988 which would show that all of them had made a total of 15 trips to abroad and the baggage receipts have also been produced. It is not disputed by the Department that the appellant and his family members have been frequently travelling on business to foreign country and have brought goods as baggage goods many of which have been permitted clearance duty-free and the rest on payment of duty. All the baggage receipts have also been produced for my scrutiny and were indeed made available even before the Ld. adjudicating authority and the Department has not doubted the authenticity or the genuineness of the same and indeed accepted the same. So far as Section 11G of the Import (Control) Order, 1955 is concerned, that would not be applicable in respect of the goods cleared duty-free as baggage and in this context I may usefully refer to Section 79 of the Customs Act, 1962 dealing with bonafide baggage exempted from payment of duty and the Baggage (Conditions of Exemption) Rules, 1975 issued in exercise of the powers conferred by Section 79(2) of the Customs Act, 1962.1 also do not find any evidence on record to show that any of the foreign goods was sold by the appellant to any person. In regard to price tags on foreign goods, it was contended that it was not in all the goods but only in some of the items merely to indicate the value of the gift to the buyer of Indian goods in the departmental store. Therefore, on consideration of the evidence on record and for the reasons set out above, I set aside the order of confiscation in regard to non-notified goods valued at Rs. 10,162/- and referred to above. So far as the rest of the goods which are notified and valued at Rs. 1,3007- is concerned, I hold that they are liable for confiscation for violation of Chapter IVA of the Customs Act, 1962 and having regard to the value, the quantity, the nature of goods namely, shaving cream, nail polish, spray, lipstick, perfume, shampoo, air refresher etc., I direct the release of the same on payment of a fine of Rs. 5,000/- (Rs. five thousand). The appellant shall be entitled to redeem the same provided the goods are available. The appellant should exercise the above option within two months from the date of receipt of this order. The appellant is entitled to redeem the goods without payment of duty since they are covered by valid baggage receipts. In the facts and circumstances of the case I reduce the penalty to Rs. 1,000/- (Rs. one thousand). Except for the above modifications, the appeal is otherwise dismissed.