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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-16-1991

Reported in : (1992)(60)ELT277TriDel

Appellant : Ramchandra

Respondent : Collector of Customs

Judgement :

1. Aggrieved by the order of the Collector of Central Excise and Customs, Jaipur of confiscation of Indian currency of Rs. 2,55,000/- under Section 121 of the Customs Act as being sale proceeds of contraband gold and imposition of penalty of Rs. 50,000/- under Section 112 of the Customs Act, the appellant has preferred the above appeal.

2. The brief facts of the case are that on 10-1-1987 at about 5.00 A.M.the appellant was apprehended by the officers of the Customs and Central Excise at Chetak Bus Stand, Udaipur and brought to the Division Office in an auto-rickshaw. A personal search resulted in the recovery of Indian currency of Rs. 2,55,000/- tied around his waist. In his statement the appellant disclosed that the money recovered from him was the sale proceeds of 10 gold biscuits which were given to him by one Shri Satram Das on 8-1-1987 to be delivered to one Shri Bhaghu Sindhi of Jodhpur and for delivering the gold biscuits to Shri Bhaghu Sindhi the appellant was to be paid Rs. 2500/- as remuneration. The currency was seized under Section 110 under a Panchnama. As a result of follow-up action, the residential premises of Shri Satram Das and Shri Bhaghu Sindhi were searched

on 11-1-1987; but nothing incriminating was recovered. Shri Bhaghu Sindhi and Shri Satram Das denied all connections with the dealings and also denied knowledge of the appellant. A show cause notice was issued to all the 3 persons to show cause why the currency should not be confiscated and penal action not be taken for contravention of the Customs Act and the Gold (Control) Act. After adjudication the charges against Shri Bhaghu Sindhi and Shri Satram Das were dropped holding that the Department had failed to come up with any direct or circumstantial evidence to suggest that the gold biscuits had in fact been given to the appellant by Shri Satram Das or sold to Shri Bhaghu Sindhi. However, currency seized from the appellant was confiscated and penalty was imposed upon him on the ground that his defence regarding extortion of statement on 10-1-1987 was only an afterthought fabricated for the purpose of the case, as he did not complain of illegal detention and recording of his statement under duress to the Magistrate when he was produced by the Customs Officer.

3. We have heard Shri Farook M. Razack, Advocate for the appellant and Shri G. Bhushan, SDR for the respondent.

4. At the outset it is pertinent to note that no gold was seized either from the appellant or Shri Satram Das or Shri Bhaghu Sindhi. Therefore, it is not understood as to how the currency seized from the appellant can be said to represent the sale proceeds of smuggled gold. The appellant was produced before the Chief Judicial Magistrate, Economic Affairs, Jaipur on 12-1-1987. On 10-1-1987 itself a telegram was sent to the Assistant Collector of Customs, Udaipur by the son of the appellant wherein he had stated that his father was forcibly taken to the Customs Office. Another telegram was sent on 11-1-1987 to the same effect, as the appellant was not released by them. After. release on 15-1-1987 the appellant got himself examined by a Government Doctor who furnished a certificate certifying the presence of injuries like bruises on the right upper lip, left wrist and swellings and dislocation of tooth. The Doctor has certified that one of the injuries is of a grievous nature. On 20-1-1987 the appellant wrote to the Assistant Collector retracting his statement of 10-1-1987. None of this has been discussed in the impugned order which merely brushes aside the defence of the appellant for the reason that he did not complain of forcible detention and extorted

statement at the earliest opportunity viz. when he was produced before the Magistrate by the Customs Officers. In addition the opportunity to cross-examine Shri Satram Das and Shri Bhaghu Sindhi and the panch witnesses has been denied to the appellant.

5. It is also seen that the charges under the Gold (Control) Act has been dropped against all the persons to whom show cause notice has been issued and the charges under the Customs Act has been dropped against the other two. It would appear that the penalty of Rs. 50,000/- on the appellant has been imposed for breach of Section 121 of the Customs Act. Before violation of Section 121 is established the following ingredients must be satisfied: (iii) the sale must be by a person having knowledge or reason to believe that the goods were of smuggled origin.

(iv) the seller and purchaser and the quantity of gold must be established by the Customs authorities.

6. In this case, however, none of the requisites of Section 121 have been fulfilled - no sale has been established, identity of the buyer and seller has not been established. As a consequence, the currency cannot be considered to represent the sale proceeds of the contraband goods and, therefore, no violation of Section 121 has been made out.

Since the charge under Section 121 of the Customs Act has not been proved against the appellant the currency notes cannot be retained by the Department and have to be returned to the appellant. Imposition of penalty is also not legal and proper in the absence of proof of violation of any provisions of the Customs Act.

7. In the light of the above discussions we set aside the impugned order and allow the appeal with consequential relief.

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