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Rajinder Kumar Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-30-1991

Reported in : (1992)(59)ELT335TriDel

Appellant : Rajinder Kumar

Respondent : Collector of Customs

Judgement :

1. These three appeals have been preferred against the orders passed by the Collector of Customs (Appeals), New Delhi. Since the issues involved in these appeals are identical, they are being disposed of by this common order.

2. Briefly stated the facts of the case are that on the basis of information, on 262-1985, the DRI officers carried out simultaneous searches at the premises of M/s. Gulati Cutpiece Store, M/s. Royal Video Cassettes Library and M/s. Gulati Karyana Store at Taran Taran, and seized the following goods of foreign origin:NAME OF THE PARTY GOODS RECOVERED VALUE OF GOODS1. M/s. Gulati Cutpiece Store 56 Video Cassettes Rs. 16,800.002. M/s. Gulati Karyana Store 20 Video Cassettes Rs. 6,000.003. M/s. Royal Video Cassettes Library 20 Video Cassettes & 1 VCR Rs. 12,000.00 In the order dated 11-8-1986 passed by the Deputy Collector of Customs & Excise, Amritsar, the seized goods were confiscated absolutely under Section .1(d) of the Customs . Act, 1962 and penalty of Rs. 2000/- each was imposed on Shri Rajinder Kumar, proprietor of M/s. Royal Video Cassettes Library, Shri Mukesh Kumar, proprietor of M/s. Karyana Store and Shri Varinder Kumar, proprietor of M/s. Gulati Cutpiece Store. The orders

passed by the Deputy Collector were challenged in appeal before the Collector of Customs (Appeals), who passed the following order:- "I observe the absolute confiscation is not warranted in these cases. Accordingly I order release of Cassettes and VCR to the parties on payment of Rs. 5000/- each. Personal penalty is reduced to Rs. 1,000/- on each appellant." 3. On behalf of the appellants, heard the learned advocate Shri K.K.Anand. He stated that Shri Rajendra Kumar, proprietor of M/s. Royal Video Cassettes Library had claimed in his statement recorded immediately after the search of his shop on 26-2-1985 that the seized VCR and 10 Video Cassettes belonged to one Jagir Singh who had left the VCR for repairs. He added that the VCR was later claimed by the wife of Jagir Singh who had also produced a baggage receipt in support of her claim that the VCR was brought by Shri Jagir Singh as a part of his baggage. Shri Anand contended that apart from the VCR only 20 Video Cassettes were seized from the premises of M/s. Royal Video Cassettes Library of which 10 cassettes belonged to Shri Jagir Singh. He contended that in respect of 63 of the 96 cassettes seized from the three premises the appellants had produced documentary evidence to establish that they belonged to persons who had brought them from foreign countries. He added that the only violation in respect of the seized video cassettes was that the provisions of Chapter IVA of the Customs Act were not complied with. Shri Anand contended that the fines and penalties imposed for technical violations was excessive. He stated that as far as Shri Varinder Kumar was concerned, no penalty could be imposed on him since he had stated that he was dealing in cloth and the cassettes seized from his premises belonged to his brother Mukesh Kumar. He added that the burden of proving that the seized goods were smuggled was on the department, since Video Cassettes were not notified under Section 123 of the Customs Act, 1962. On these grounds Shri Anand pleaded that the redemption fines and the penalties retained under the impugned order may be dispensed with.

4. On behalf of the Revenue the learned SDR Shri G. Bhushan stated that the appellants had made contradictory statements in respect of the seized goods. He pleaded for the rejection of the appeals on the grounds that the requirements of Chapter IVA had not been complied with in respect of the seized goods and the Appellate authority had already granted sufficient relief to the appellants.

5. I have examined the records of the case and considered the submission made by both sides. It is seen that as a result of the search of the three premises on 22-6-1985 in all 96 pieces of video cassettes were recovered. In as far as Shri Varinder Kumar Gulati is concerned it is seen that in his statement dated 22-6-1985 he disclaimed the 56 pieces of video cassettes recovered from his shop M/s. Gulati Cutpiece Store. He claimed that the seized video cassettes belonged to his brother Mukesh Kumar. The 20 pieces of video cassettes seized from the premises of M/s. Gulati Karyana Store were claimed by its proprietor Shri Mukesh Kumar Gulati who in his statement dated 22-6-1985 admitted that 56 video cassettes seized from the premises of M/s. Gulati Cutpiece Store also belonged to him. He pointed out that he was running the business of video library since February, 1985 in the name and style of M/s. Royal Video Cassettes and he was acquiring video cassettes of foreign origin from Palika Bazar, Delhi. He also claimed that the VCR recovered from the premises of M/s. Royal Video Library belonged to one Jagir Singh who had given it for repairs. Shri Rajinder Kumar Gulati proprietor M/s. Royal Video Cassettes Library in his statement dated 22-6-1985 also admitted the recovery of one National VCR-NV-300 and 20 Video Cassettes from his shop. Both Mukesh Kumar Gulati and Rajinder Kumar Gulati in their statements recorded immediately after the search of their business premises admitted that they did not possess any documents to show the source or acquisition of the seized goods.

6. It is seen that in as far as the seized video cassettes are concerned the provisions of Chapter IVA were required to be complied with by virtue of Video Cassettes being notified under Section 11 of the Customs Act, 1962. Since these requirements were not complied with I am of the view that the impugned order upholding the confiscation of the seized video cassettes under Section 111(p) of the Customs Act, 1962 is legal and sustainable.

7. As far as the seized VCR is concerned it is seen that in his statement dated 22-6-1985 recorded immediately after the seizure Shri Mukesh Kumar Gulati had claimed that it belonged to one Jagir Singh who had left it for repairs. Later Smt. Charanjit Kaur, wife of Shri Jagir Singh claimed the VCR and also produced the baggage receipt against which Shri Jagir Singh had imported a similar VCR.

Under these circumstances in as far as the seized VCR is concerned, I am inclined to extend the benefit of doubt to the appellants and accept their contention that being the property of Shri Jagir Singh it was not liable for confiscation.

8. In view of the above discussion, the impugned order in so far as it relates to the confiscation of the seized VCR is set aside and the VCR is ordered to be released to the owner. The order upholding the confiscation of the seized video cassettes is, however, confirmed.

Having regard to the facts and circumstances of the case the owner of cassettes is given the option to redeem the video cassettes in question on payment of a fine of Rs. 2,000/- only. The personal penalty on each of the appellants is reduced to Rs. 500/- only.

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