

Rajeev Kumar Aggarwal Vs. Cegat

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Court : Delhi

Decided On : Mar-25-1996

Reported in : 1997(92)ELT76(Del)

Judge : M.J. Rao and; M.K. Sharma, JJ.

Appeal No. : Civil Writ Petition No. 2645 & Civil Misc. Petition No. 4400 of 1995

Appellant : Rajeev Kumar Aggarwal

Respondent : Cegat

Advocate for Def. : Mrs. Jyoti Singh and ; Amit Chadha, Advs.

Advocate for Pet/Ap. : Shri Vivek Sood, Adv

Judgement :

ORDER

1. Heard the Id. Counsel for the petitioner and Id. Counsel for the respondents 1 to 3. The writ petition was filed by the petitioner for quashing the orders passed by the Collector of Customs on 25-1-1991 and the order of the Appellate Tribunal dated 7-4-1995 and directions to deliver the goods to the petitioner or to the Railway Authorities. The petitioner claimed that by virtue of certain Railway receipts, the Ball Bearings purchased from Calcutta should have been released in favor of the petitioner. Admittedly these Ball Bearings were seized by the Customs Authorities while they were in the custody of Northern Railway Authorities at

Calcutta. The Customs Authorities seized the goods as they wanted to investigate whether they were smuggled goods. The Collector of Customs passed an order on 25-1-1991 and found as follows :-

'I find that the Ball Bearings in question are not notified item under Chapter IV-A of Customs Act, 1962 and neither these goods are covered by Section 123, *ibid.* thereforee, it is for the department to prove that the goods under seizure had been smuggled into India. No evidence has been produced before me by the department.'

Having given a finding that the department has not produced any evidence to show that the goods are smuggled into India, the said Collector, proceeded to go into the question of ownership of the goods and came to the conclusion that in the absence of any documentary evidence of ownership of the goods by Shri Rajeev Kumar Aggrawal (Writ Petitioner) and in view of the discrepancy in the variety of Ball Bearings claimed by him, the claim of ownership by the petitioner could not be accepted. He thereforee, ordered absolute confiscation. The appeal filed by the appellant before us was dismissed on 7-4-1995, rejecting the claim of the petitioner for release of goods.

2. In this Writ Petition, we have given notice of the Northern Railways and learned Counsel appearing for Northern Railways. The petitioner's Counsel submits that on finding that the goods are not notified goods and there was no material produced by the department that the goods were smuggled goods, the only finding that should have been given by the Collector was that the goods were not smuggled goods. *Id.* Counsel further contends that once such a finding is given, the Collector ought to have restored the goods to the Railway Authorities from whom the goods were seized, leaving it open to the Railway Authorities to decide any claim that might be made before it for restoration.

3. We are of the opinion that the contention of the *Id.* Counsel for the petitioner is well founded. On the finding that the goods are not notified and that the department was unable to prove that they were smuggled goods, the only conclusion that the Collector could have come to was that there was no proof that the goods were smuggled goods. thereforee, he had no jurisdiction to order

confiscation of the goods. The order of the Collector and of the Appellate Tribunal quashing the confiscation of goods is accordingly quashed.

4. It was then not for the Collector or for the Appellate Tribunal to go into the question of ownership of goods. If the Customs Authorities had seized the goods from the Railway Authorities to investigate, if they were smuggled goods and if there was no proof thereof, they ought to have restored the goods to the Railway Authorities. It will be for the Railway Authorities to decide what is to be done with the goods. All observations made by them with regard to the ownership of goods are therefore, set aside. This however, does not mean that we have adjudicated on the question of ownership of the goods, nor that we are accepting that the petitioner is the owner of the goods nor that he was entitled to possession from the Railways. The Customs Authorities will restore the goods to the Northern Railways and it will be for the petitioner to make an appropriate claim before the Railway Authorities to decide the claim of the Writ Petitioner in accordance with Law.

5. therefore, the goods and other documents including the Railway receipts, if any received from the Railway Authorities will be restored back to the said authorities by the Customs Department. This should be done within one month from the date of receipt of the order.

6. The Writ Petition is allowed to the extent indicated above, but without costs.

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