

P. Abdul Sattar Vs. Collector of Customs

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

Decided On : Jun-16-1994

Reported in : (1994)LC309Tri(Chennai)

Appellant : P. Abdul Sattar

Respondent : Collector of Customs

Judgement :

1. This appeal is against the order of the Collector of Customs, Bangalore dated 3-11-1990 absolutely confiscating Vessel "Zoodu Salamy" along with its tackle and gear under the provisions of Section 115(1)(a) and (2) of the Customs Act, 1962.

2. Shri Jestmal, the learned Counsel for the appellant submitted that proceedings were instituted against the appellant on the ground that the vessel in question which belonged to the appellant was used as a means of transport in the smuggling of watches under seizure with the knowledge of the Tindal and the crew members resulting in the impugned order. The learned Counsel contended that initially an order of adjudication was passed on 1-10-1980 by the Collector of Customs, Bangalore, absolutely confiscating the wrist watches kept concealed in the vessel and also the vessel in question. The learned Counsel submitted that he is not concerned about the watches and the issue is with reference to the confiscability and also the absolute confiscability of the vessel under the provisions of the Customs Act, 1962, the 'Act' for short. The appellant as, against the first order of adjudication referred to supra, filed a writ petition in the Karnataka High Court and the same was disposed of on 29th June 1990 in W.P. No.32190/81. The

High Court in that case referring to the ruling of the Supreme Court in the case of Hargovind Das K. Joshi and Ors. v. Collector of Customs and Ors. -1992 (61) E.L.T. 172 (SC) and also to the plea of the appellant set aside that part of the order relating to absolute confiscation of the vessel and quashed the same. The High Court further found that if the authorities decided that "it is permissible to order for the petitioner being given option to redeem the vessel and other accessories by paying fine, the same shall be done". The appellant filed a writ appeal against this order in Writ Appeal No. 2419/90 which was disposed of by the Division Bench. During the pendency of the writ appeal the adjudicating authority pursuant to the order of the Single Judge, passed an order of adjudication on 30-11-1990, the order impugned here, absolutely confiscating the vessel in question, without confirming to the direction of the High Court. The Division Bench taking note of this aspect observed that "the question whether the discretion has been properly exercised or not under Sections 115 and 125 of the Customs Act does not arise, since the Collector had by his order dated 30-11-1990 confiscated the vessel".

The Division Bench further observed that the proper remedy for the appellant is to pursue an appeal or revision as are available under the Customs Act, because the order gives the appellant an independent cause of action." The learned Counsel contended that it is not disputed by the Department that the vessel in question was used as a conveyance for the carriage of goods by hirer and therefore in terms of Section 115(2), the Department has no option except to give an option to the appellant to redeem the same on payment of fine. The learned Counsel submitted that the appellant was not challenging the confiscability of the vessel under Section 115(2) and pleaded that the confiscation cannot be an absolute confiscation, but one subject to necessarily an option being given to the appellant in terms of Section 115(2). The learned Counsel further contended that the confiscation of the vessel under the impugned order under Section 115(1)(a) is absolutely unsustainable in law since this Section was not invoked in the Show Cause Notice specifically putting the appellant on notice of the same.

The learned Counsel further submitted that even in the first order of adjudication dated 1-10-1980 the confiscation was only under Section 115(2) of the Act for

transporting contraband goods. The learned Counsel drew our attention to para 7.2 of the said order which reads as under :- "7.2 The Vessel "MSV-Zoodu Salamy" having been used as a means of transport in the smuggling of these watches under seizure; with the knowledge of the in-charge Tindel as also other crew members, the same is rendered liable to confiscation under Section 115 of the Customs Act, 1962." The learned Counsel also referred to Section 125 of the Act and contended that in regard to confiscation of any goods the Section says that the officer adjudging it may in the case of any goods, the importation or exportation thereof is prohibited under the Act or under any other law, for the time being in force and shall in the case of any other goods give the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit. It was urged that the definition of the term "Goods" include vessel. The goods confiscated in the present case is the vessel. It is not anybody's case that the vessel was imported or sought to be exported and therefore the prohibitory clause in the first part under Section 125 would not apply. Therefore, in regard to the second part of Section 125, the appellant should necessarily have been given an option of redemption.

Since this has not been done, the impugned order is not sustainable in law. The learned Counsel further submitted that the appeal may not be remanded at this stage as it has had a chequered career since 1979 and the vessel also has been auctioned by the Department without notice to the appellant.

3. Shri Gregory, the learned SDR and Shri Jeyaseelan the learned D.R. took us through the various sections of the Customs Act as nice questions of law were involved and argued by the learned Counsel for the appellant. Reference was also made to the Show Cause Notice and the adjudication orders. It was contended that in as much as in the first show cause notice, even though Section 115(1)(a) is not specifically set out against the appellant for confiscation, in as much as the annexure to the show cause notice gave all the details about the circumstances of the seizure including the presence of cavity in the vessel, the appellant should be deemed to have been put on notice of the same. It was further urged that in as much as Section 115 is mentioned, all clauses under Section 115 must be taken to have been communicated to the appellant. The learned SDR submitted that in the

facts and circumstances of the case Section 125 will have no application at all as that Section particularly refers only when confiscation of goods prohibited for importation or exportation is concerned.

4. We have considered the submissions made before us. We note that the case has a chequered history since 1979 onwards. On going through the show cause notice we find that the charge against the appellant was against confiscation of the vessel in question as it was used as a means of transport for smuggling of watches under seizure with the knowledge of Tindel and crew members in terms of Section 115. The show cause notice does not specifically set out the ingredients for confiscation of the vessel in terms of Section 115(1)(a) nor specifically put the appellant on notice. No doubt in the Annexure, the particulars relating to the existence of the cavity in the vessel and other circumstances are set out. The original adjudicating authority in the first order of adjudication proceeded under Section 115(2) as evidenced from para 7.2 extracted above, and it is only in this context the High Court remanded the matter. We note that during the pendency of the writ appeal, the second order of adjudication came to be passed confiscating the vessel absolutely under Sections 115(1)(a) and 115(2).

So far as Section 115(1)(a) is concerned since there was not a specific charge in the show cause notice and since the appellant was not specifically put on notice with the necessary ingredients thereunder and as mentioned above since the first adjudicating authority proceeded to confiscate the vessel initially under Section 115(2), absolute confiscation of the vessel by invoking Section 115(1)(a) is not sustainable in the facts and circumstances of this case. So far as Section 115(2) of the Act is concerned, the appellant is not challenging the confiscability of the vessel. The contention of the appellant is that there cannot be an absolute confiscation in as much as Section 115(2) makes it obligatory to the authorities concerned to grant the appellant an option of redemption of the goods in lieu of absolute confiscation. The High Court also directed the authorities to go into this aspect and exercise the discretion with reference to Sections 115 and 125 of the Act. Therefore, on consideration of the entire evidence we hold that the absolute confiscation of the vessel is not sustainable in the facts and circumstances of this case. We, therefore, set aside the impugned order and remand the matter to the

original authority for consideration of the issue for giving opinion in accordance with law. Since the matter is pending since the year 1979 onwards the learned adjudicating authority is directed to dispose of the matter expeditiously, preferably within three months from the date of receipt of this order.

5. I observe that all issues are open for consideration by the learned lower authority and the appellant is free to urge all points in regard to his eligibility for redemption of the vessel on payment of fine. It is observed that the learned lower authority has confiscated the vessel under Section 115(1)(a) of the Act, without putting the appellant on notice and for this reason the confiscability of the vessel under this Section cannot be upheld. It is open to the learned lower authority to issue a notice under Section 115(1)(a), if it is permissible under the law.

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