

D. Kumar Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-20-1994

Reported in : (1994)(74)ELT620TriDel

Appellant : D. Kumar

Respondent : Collector of Customs

Judgement :

1. Shri D. Kumar has filed this appeal against the order of Collector of Customs (Appeals). The Collector of Customs (Appeals) in his order had held :- "I have gone through the appeal petition and submissions made at the time of personal hearing. I find that no correlation of the impugned goods could be made with reference to the certificates furnished regarding their brand and origin. As required under provisions of Foreign Privileged Persons Rules, 1957, no prior permission has been obtained from Central Board of Excise & Customs through Ministry of External Affairs. The original order is well reasoned and is held to be in order. The appeal is rejected and disposed of accordingly." 2. Briefly stated the facts of the case are that on 2-2-1988, Income-tax Authorities of Delhi found 42 bottles of foreign liquor during the search of the premises of Shri D. Kumar. Customs Officers of Delhi on search recovered 42 bottles of foreign liquor from an Almirah.

Out of the recovered 42 bottles, four bottles were found with their seals broken. As Shri Umang Kumar, who was present at the time of search and who is the younger brother of Shri D. Kumar could not produce any documentary evidence, therefore, 38 bottles of foreign liquor collectively valued at Rs. 3,250/- (CIF) were seized in

the reasonable belief that they were liable to confiscation. Subsequently, a show cause notice was issued to Shri D. Kumar asking him to explain as to why the said bottles should not be confiscated for violation of various provisions of Customs Act and why a penalty should not be imposed.

3. Shri K.K. Manjani, the learned Advocate appearing for the appellant submitted that Shri D. Kumar in his statement recorded on 29-2-1988 had explained the acquisition of 38 bottles of foreign liquor stating clearly that 34 bottles have been contributed by three foreign embassies and that the remaining four bottles were brought by him from London during the past few trips; that Shri D. Kumar also produced certificates issued by the three foreign embassies testifying to the fact of contribution of liquor bottles; that these facts were in turn verified by the Department and found in order. That these bottles were gifted by the foreign embassies. He brought out two points very clearly that goods were legally imported into India and were gifted and that the foreign embassies were empowered to present gifts and therefore, neither the goods could be confiscated nor the demand for duty can be raised on those goods. Referring to the Foreign Privileged Persons (Regulations of Customs Privileges) Rules, 1957, the Id. Advocate submitted that consumable items could be gifted by the foreign privileged persons.

4. Shri B.D. Bhagat, the Id. JDR reiterated the findings of the lower authorities.

5. Heard the submissions of both sides and considered them. I find that the Protocol Division of the Ministry of External Affairs, New Delhi, when they were asked to verify whether the signature on the letters issued by certain Embassies were right or not, the External Affairs Ministry intimated that the signatures on the said three certificates appeared to tally with the specimen signatures of the Diplomats concerned. I also observe that the Diplomats are permitted to import liquor for their personal consumption. Under Rule 4 of the Foreign Privileged Persons (Regulations of Customs Privileges) Rules, 1957, the privileged persons are required to take prior permission of the Ministry of External Affairs and the Customs authorities in case they want to sell or dispose of otherwise the goods. There is no dispute, I find, about the legal import of the confiscated liquor bottles.

The only dispute is whether the appellant was in legal possession of the bottles when the bottles were gifted to him by the persons authorised to import these bottles without an import licence. Rule 4 as quoted above does not lay down clearly as to how to deal with the consumable items gifted by the Privileged persons. However, by implication it may be said that no other person (other than a Privileged person) can possess these goods without observing the guidelines given in Rule 4.

To that extent the possession of the liquor bottles by the appellant was not authorised under the Customs Act. However, having regard to the fact that Rule 4 as quoted above is not very clear on the question of items gifted, I, therefore, allow the appellant to redeem the liquor bottles on payment of Rs. 2,000 /-. However, as the goods are recognisable as non-duty paid, duty at appropriate rate applicable under the relevant provisions of law shall be payable in addition to the redemption fine. On the quantum of penalty, I find that penalty is only Rs. 1,000 /- which I do not see any reason to interfere with as it appears to be quite reasonable.

6. But for the above modifications the impugned order is upheld and the appeal is disposed of accordingly.

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