

Sheesh Narain Agarwal Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-24-1994

Reported in : (1995)(76)ELT207TriDel

Appellant : Sheesh Narain Agarwal

Respondent : C.C.E.

Judgement :

1. The appellants are aggrieved by Order No. 1/Collector/Cus./89, dated 4-10-1989 ordering absolute confiscation of 525 Silver Coins valued at Rs. 14,175/- and imposing penalty of Rs. 5000/- on the appellants on the ground that the appellants admitted transport of specified goods to Bombay, a Specified Area, without cover of prescribed transport vouchers.

2. The brief facts of the case, as set out in the Collector's Adjudicating order in the very first para indicate that "the Preventive Officers Central Excise, Kanpur intercepted the appellant on 15-10-1980 who was coming to Railway Station alongwith one Shri R.K. Shukla. The Preventive Officers during the course of search recovered 525 coins of silver valued at Rs. 14,175.00 and..." The Show Cause Notice dated 13-7-1988 however indicates that Preventive Officer intercepted Shri Sheesh Narain Agarwal, the appellants on 15-10-1980 at Kanpur Railway Station. The Railway ticket from Kanpur to Bombay alongwith Platform ticket was also recovered. In the statement recorded, the appellants admitted that they intended to take the goods to Bombay. Goods have been confiscated on the charge of transporting goods to the specified area i.e. Bombay which is specified

under Notification No. 8-Cus., dated 3-1-1969. Silver bullion and coins are also specified goods under Notification No. 7-Cus., dated 3-1-1969.

3. Ld. Advocate for the appellant submitted that goods were actually being taken for sale at local Sarrafa Market at Kanpur. Mere intention to transport them to Bombay at best could not amount to transport as it will amount to preparation and it is not an attempt within the meaning of Section 113 of Customs Act, 1962. He cited in defence the case of K.Babu Rao and Ors. v. CC, Cochin [1986 (26) E.L.T. 766 (Tribunal)] where Tribunal held that mere preparation is not an attempt. Citing again the case of Nasu Sheikh and Ors. v. The State of Bihar (AIR 1972 SC 1610), Ld. Advocate submitted that the Hon'ble Apex Court had held that question of distance between place of seizure and State boundary is important while dealing with the case under Essential Commodities Act, 1955 - Bihar Foodgrains (Movement Control) Order, 1957. Kanpur is more than 1000 Km. away from Bombay, a specified area, and mere intention to go to Bombay with specific goods from a place which is not a specified would not constitute attempt since the appellant could have changed their mind on the way.

4. Ld. D.R. while agreeing that Kanpur was not a specified area submitted that statement recorded indicate clear intention to transport specified goods to a specified area without necessary transport vouchers and therefore offence was established.

5. I have given careful consideration to the submissions made by both sides. Section 113(1) of Customs Act, 1962 provides for confiscation of any specified goods in relation to which any provision of Chapter JVB or of any rule made under this Act for carrying out the purposes of that chapter have been contravened. Section UK prohibits transport of specific goods from any part of India or within any specified area unless accompanied by any transport voucher. Admittedly, both Bombay and silver coins have been declared specified area and specified goods.

Section 114 of Customs Act, 1962 makes any person who in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 113, or abets the doing or omission of such an act shall be liable to a penalty under that Section. Collector in his order has held that

there is no warrant to hold that only when transportation is complete the act will attract provisions of Section 11H *ibid*. Essentially transportation is a process which has two limbs that is, the origin and destination. If the destination is a specified area and any of the numerous modes of transportation is adopted or initiated, it will be safe to assume that transportation into the destination has taken place, however far away or scattered the place of origin may be.

6. In case of *Ramkrishna Agarwal and Ors. v. C.C.E., Orissa, 1989 (39) E.L.T. 183* somewhat similar case relating to transport of specified goods, the Hon'ble Court held that they were unable to agree with the view expressed by opposite party No. 1 that the petitioners were transporting silver, being specified goods, by causing its movement to Bombay, a specified area, without being accompanied by transport vouchers as contemplated under Section UK. The Hon'ble Orissa High Court observed: In *Malkiat Singh v. State of Punjab - AIR 1970 SC 113*, distinction was drawn between preparation and attempt. It was held that a preparation for committing an offence is different from attempt to commit it. The preparation consists in devising or arranging the means or measures necessary for the commission of the offence. On the other hand, an attempt to commit the offence is direct movement towards the commission after preparations are made. In order that a person may be convicted of an attempt to commit a crime, he must be shown first to have had an intention to commit the offence, and secondly to have done an act which constitutes the *actus reus* of a criminal attempt. The sufficiency of the *actus reus* is a question of law which had led to difficulty because of the necessity of distinguishing between acts which are merely preparatory to the commission of a crime, and those which are sufficiently proximate to it to amount to an attempt to commit it. If a man buys a box of matches, he cannot be convicted of attempted arson, however clearly it may be proved that he intended to set fire to a haystack at the time of the purchase. Nor can he be convicted of this offence if he approaches the stack with the matches in his pocket, but if he bends down near the stack and lights a match which he extinguishes or perceiving that he is being watched, he may be guilty of an attempt to burn it. It was further held that the test for determining whether the act of the accused person constituted an attempt or preparation is whether the overt acts already done are such that if the offender charges his mind and does not proceed further in its progress, the acts already

done would be completely harmless. In (1970) 72 Bom. L.R. 575, Yusuf Abdulla Patel v. R.N. Shukla, it was held that a person commits the offence of attempt to commit a crime when, with the intention of committing that crime, he does an act or acts which constitute a direct movement towards its commission, but the actual commission of the crime is frustrated by reason of the fact that it is interrupted by circumstances independent of his violation. Such act need not, however, be the penultimate act towards the commission of the crime. Considered in the light of the undisputed facts and the principles of law referred to above, we are unable to agree with the view expressed by opposite party No. 1 that the petitioners were transporting silver being specified goods by causing its movement towards Bombay, a specified area without being accompanied by a transport voucher as contemplated in Section UK. Therefore, movement of the silver did not attract the penal provisions of Sections 113, 114, 115 and 125 of the Act." 7. In case of Nasu Sheikh and Ors. (supra) the Hon'ble Supreme Court relying on earlier decision of Malkiat Singh v. State of Punjab, AIR 1970 SC 713 : 1969 (2) SCR 663 observed that "We say this because the question of distance assumes importance in the light of the decision of this Court in Malkiat Singh v. State of Punjab 1969 (2) SCR 663 : AIR 1970 SC 713. In that case also the question was whether an offence had been committed under Section 7 of the Essential Commodities Act read with paragraph 3 of the Punjab Paddy (Export Control)

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