Prem Kumar Chadha Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-06-1995

Reported in : (1995)LC418Tri(Delhi)

Appellant : Prem Kumar Chadha

Respondent : Collector of Customs

Judgement :

1. This Appeal is directed against the order-in-original passed by the Additional Collector who ordered for absolute confiscation of 15 kgs.

heroin valued at Rs. 75,00,000/-, 29 kgs. Hashish valued at Rs. 87,000/- under Section lll(d) of the Customs Act, 1962. He has also imposed personal penalty of Rs. 20,000/- on the appellant and on an other person namely Upkar Singh Sandhu under Section 112 of the Customs Act, 1962. The appeal of Shri Upkar Singh Sandhu is not before us. The appellants have not challenged the absolute confiscation of the impugned goods but has challenged the imposition of personal penalty of Rs. 20,000/-. The case against the appellant is based on the recovery of a chit which contained a name of Shri Prem Pathan said to have been recovered from the site of encounter alongwith the goods under seizure.

The Department conducted the investigation and a show-cause notice was issued to the appellant and Shir Upkar Singh Sandhu on 15-6-1990. The same was not served on them and therefore, it had been pasted on the Notice Board of Customs House. The Counsel for the appellants wrote a letter dated 29-10-1990 to the adjudicating authority on behalf of the appellant and requested for the copy of the show-cause notice alongwith the documents relied by the department. The Department issued a Corrigendum to show-cause notice and supplied a copy of the recovered chit and Chemical Examiner Report to the Counsel of the appellant. The Counsel replied to the show-cause notice by which the Counsel requested for particulars of investigation carried out by the department to find out the real name of Prem Pathan to be supplied to them. The show-cause notice alleges that the contents of the chit in Urdu indicated to the addressee to forward the chocolate to Prem Pathan. The appellant submitted that the contents of the chit goes to reveal that the order for sending chocolate was placed with the scribe of the chit by the addressee and not by Prem Pathan. It was pointed out that there was no allegation that Prem Pathan i.e. the appellant herein had any connection or relationship with the said Shri Upkar Singh. Therefore, it was pleaded that the penalty proposed to be imposed upon him is not sustainable. The appellants also denied that he had any connection with or any interest in the seized goods.

The ld. Adjudicating Authority rejected their contention and held that the chit recovered from the site of the encounter referred only to the appellant and hence he was deemed to have been involved in the smuggling of narcotic drugs. Therefore, he has imposed the personal penalty of Rs. 20,000/- under Section 112 of the Customs Act.

2. We have heard Ms. Archana Wadhawa, ld. Advocate and Shri Sanjeev Sachdeva, ld. SDR for the Revenue. Ld. Advocate submitted that there is absolutely no evidence to link between the chit recovered and the appellant. The chit was supposed to have been in the name of Prem Pathan while the appellant's name is Prem Kumar Chadha. He is an innocent person doing business of brokerage. The appellant has absolutely no connection with the smuggling of narcotics and he had been deliberately implicated in the case on the basis of suspension, presumption and assumption and hence the order is totally unsustainable in law.

4. We have carefully considered the submissions made by both the sides and have perused the order. The chit is said to contain the name of Shri Prem Pathan,

and said to have been written by one Khaliq Hug. The chit is in Urdu which does not address to anybody except to start with Bhai Saheb Adab. The chit reads as follows : Aap ki chcolate ka jitna order tha utna mal nahin mila. Jo mila aap ko bhej rahen hain. Iskey aage bhej de Prem Pathan to Amritsar mein de dein The first plea is that the department has to prove the seizure of the chit. We agree that this has not been proved. It is not known as to fromwhere this was seized, who seized this chit as, no mahajar has been drawn. The procedure pertaining to seizure of goods has not been followed in this case. It is a fundamental rule that seizure has to be done in accordance with the relevant rules in Chapter IV of the Customs Act, 1962. The provisions of criminal procedure to be relating to such searches apply and have the same affect as per Sub-section 2 or Section 105 of Customs Act. The seizure of goods, documents and things have to be done as per Section 110 of the Customs Act. The Proper Officer is required to prepare an inventory of the seized goods and documents. In this particular case, the officers have not prepared any mahajar pertaining to the seizure of the chit. It is the department's case that the chit was supposed to be lying near the seized goods. It is not the case of the department that the chit was recovered from search of the premises or on search of a person carrying the seized goods. The goods had been seized in encounter on Indo-Pak Border. It is also stated in the impugned order that the Narcotics drug under seizure was despatched from Pakistan through a carrier, who made good his escape under the cover of darkness and the said goods were meant for Shri Prem Kumar, Chadha, as the chit recovered from the site of the encounter revealed that the consignment of narcotics drugs was meant for Prem Kumar Chadha and the same was required to have been delivered by one Shri Upkar Singh. It is very difficult to belief that this chit was recovered from the spot as there was no mahajar nor any statement of the officer who recovered this chit to believe the department's version. It is also not possible to accept that Prem Pathan refers to the appellant, who calls himself at Prem Kumar Chadha. There is not an iota of evidence to link the name of Prem Pathan on the chit with Prem Kumar Chadha. Therefore, the department has proceeded against the appellant without any evidence. As the proceedings suffers from many infirmities, the same is liable to be set-aside. Therefore, the appeal is allowed.