

Madan Lal Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-24-1995

Reported in : (1996)(84)ELT546TriDel

Appellant : Madan Lal

Respondent : Collector of Customs

Judgement :

1. These appeals arising out of the order dated 1-5-1991 passed by the Collector of Customs (Appeals), New Delhi were heard together. They are therefore being disposed of by this common order.

2. Briefly stated the facts of the case are that acting on prior information officers of Customs, Barmer intercepted Truck No. RJC 3479 near Barmer when it was coming from Jaisindher on 19-5-1987. On search of the detained truck 10 pieces of silver weighing 7.354 kg valued at Rs. 36,870 of 99% purity were seized under Section 110 of the Customs Act, 1962 from a cavity in the body of the truck. The seized silver was packed in a cloth nedi on which in blue colour the word Muhabbat was found embossed in Urdu. The cloth nedi was also embossed with English words "8888 superfine finish coarse 43 metre". On 20-5-1987 statements of Kanaram, driver of the truck, was recorded under Section 107 of the Customs Act, 1962 in which he, inter alia, stated that the seized silver belonged to one Shri Madan Lal and it was given to him by Shri Madan Lal in a cloth nedi which he had kept in the cavity of the truck.

He pointed out that the silver was to be delivered to Madan Lal at Barmer on 20-5-1987. He also stated that as instructed by Shri Ashok Kumar, the owner of the truck, he had contacted the said Madan Lal and had received from him the seized silver. Kanaram also stated that for the carriage of silver he was to be paid at the rate of 50 Paise per tola out of which 10 Paise were to be retained by him and 40 Paise were to be passed on to the owner of the truck. In his statement dated 27-5-1987 recorded under Section 108 of the Customs Act, 1962 Madan Lal inter alia admitted that the seized silver belonged to him. He claimed that it was purchased at Jodhpur in the year 1979 and stated that he would produce the bill after tracing it out. Statement of Ashok Kumar son of Kishan Lal was recorded under Section 108 of the Customs Act, 1962 on 23-5-1987 in which he, inter alia, stated that the truck belonged to him and that Kanaram was the driver of the truck and the silver seized from the truck was carried without his knowledge. Madan Lal produced Bill No. 740 dated 27-8-1979 issued by M/s. Kamal Enterprises, Jodhpur showing the sale of silver in support of his claim that the seized silver was purchased by him in 1979 against the said bill of Kamal Enterprises, Jodhpur. In his statement dated 4-11-1987 recorded under Section 108 of the Customs Act, 1962 Kamal Kishore Johari of Kamal Enterprises stated that he had lodged a FIR on 26-11-1984 with the Sardarpura Police Station, Jodhpur reporting the loss of his entire records from the year 1979 to 25-11-1984 and was not in a position to produce the duplicate copy of Bill No. 740, dated 24-8-1979. However, seeing the Panchnama dated 19-5-1987 he stated that the silver sold by him to Madan Lal against said bill contained Hathi Chhap and Kanta Chhap markings. On the basis of the investigations carried out by the Department a show cause notice was issued to Madan Lal, Ashok Kumar and Kanaram proposing confiscation of the seized silver under Sections 111(b), 111(d), 111(k) of the Customs Act, 1962 and confiscation of the truck used for the carriage of the seized silver under Section 115 ibid. Another show cause notice dated 7-7-1988 was issued to Madan Lal, Kana Ram and Ashok Kumar proposing penal action under Section 112 of the Customs Act, 1962. In the second notice, the proposals for confiscation, as made in the first notice, were also reiterated. Madan Lal in his written reply denied the allegation. He contended that the seized silver was of Indian origin which had been lawfully purchased by him against Bill No. 740, dated 24-8-1979. He stated that there was

no restriction in respect of silver specified in the relevant notification issued by the Department and therefore the seized silver was not liable for confiscation. He contended that the statements recorded by the authorities were recorded under duress and coercion. He also asked for cross examination of certain witnesses. In his defence Shri Kishan Lal submitted that the seized truck belonged to him and his son Ashok Kumar and it was used for the transport of the seized silver without their knowledge. They contended that Kanaram being an illiterate person had put his thumb impression in token of attestation of the statement dated 20-5-1987 which could not be relied upon against the other persons named therein.

He submitted that there was no cavity or secret chamber in the truck as alleged in the show cause notice. Ashok Kumar also contended that Kanaram, driver of the truck, was not authorised to accept any goods for transportation in the seized truck. He contended that the seized truck was not liable to confiscation under Section 115 of the Customs Act, 1962. By his order dated 19-8-1990 the Deputy Collector of Customs, Jaipur rejected the appellants contention and ordered absolute confiscation of the seized silver under Sections 111(b), 111(d), 111(k) of the Customs Act, 1962. He ordered absolute confiscation of the seized truck under Section 115 of the Customs Act, 1962. He also imposed a penalty of Rs. 5,000/under Section 112 ibid on each of the notices.

3. Being aggrieved by the order passed by the Deputy Collector Madan Lal, Ashok Kumar, Kishan Lal and Kanaram preferred appeals before the Collector (Appeals). By the impugned order the Collector (Appeals) rejected the appeal filed by Madan Lal. He partially modified the order passed by the Deputy Collector by allowing redemption of the seized truck on payment of redemption fine of rupees one lakh and also reducing the personal penalty from Rs. 5000/- to Rs. 4000/- on Ashok Kumar and Kishan Lal. The penalty on Kanaram was also reduced to Rs. 3000/- only.

4. On behalf of the appellants Shri Harbans Singh, Ld. Advocate appeared before us. He submitted that the Deputy Collector's finding as confirmed by the Collector (Appeals) was illegal and not sustainable since the seized silver could not be deemed as smuggled since there were no markings on it to show its foreign origin.

He added that the facts that the silver was of 99% purity and the cloth covering in which it was found there were certain words written in Urdu language did not establish its foreign origin. He added that during the relevant time silver was not notified under Section 123 of the Customs Act, 1962 and accordingly the burden to prove its smuggled nature was entirely on the Department. He stated that the Department had failed to discharge this burden and, therefore, confiscation of the silver was illegal. He submitted that Madan Lal had claimed the seized silver and had also produced bills to establish his claim that it had been purchased in 1979 from M/s. Kamal Enterprises, Jodhpur. He contended that the truck was jointly owned by Kishan Lal and his son Ashok Kumar who was only 16 years old and both of them had stated that the truck was used by the driver Kana Ram without their knowledge and consent. He contended that the statement of Kana Ram cannot be relied upon since he was an uneducated person and he had put his thumb impression on the statement as written by the departmental officers. He argued that under these circumstances the seized truck was also not liable for confiscation. He contended that the Collector (Appeals) had arbitrarily fixed the amount of redemption fine of Rs. 1 lakh in respect of the seized truck without ascertaining its value. On these grounds he pleaded that the impugned order may be set aside.

5. On behalf of the respondent Shri P.N. Das, DR reiterated the findings of the Collector (Appeals) in the impugned order.

6. We have examined the records of the case and considered the submissions made on behalf of both sides. On perusal of the order passed by the Deputy Collector it is seen that the seized silver was held as liable for confiscation under Section 111(b), 111(d) and 111(k) of the Customs Act, 1962. It has been contended by Shri Madan Lal, who had claimed the seized silver, that it was not liable for confiscation since it belonged to him and had been purchased by him from Kamal Enterprises, Jodhpur against Bill No. 740 dated 24-8-1979. He has also contended that the silver in question did not bear any foreign markings and merely on account of the fact that it was of 99% purity and it was enclosed in a cloth nedi covering bearing certain markings in Urdu it could not give rise to the presumption that it was smuggled from a foreign country.

It has been argued that the seizure of the silver in question was illegal and its confiscation under Section 111(d) is not sustainable since silver not being notified at the relevant time under Section 123 of the Customs Act, 1962, the burden to prove its smuggled nature was on the Department which it had failed to discharge. In this regard it is seen that the seizure of the silver in question was effected on the basis of prior information and at a place which was close to the International border across which silver and other articles of foreign origin are smuggled in large quantities. It was found concealed in a cavity made in the truck from which it was recovered. The truck driver in his statement confirmed that the silver was smuggled and it was given to him by Madan Lal for being carried to Jaisindhar where it was to be delivered to Madan Lal and for its transportation he was to receive 50 Paise per tola, out of which 10 Paise per tola was to be retained by him and the rest of the amount was to be given to the owners of the truck Ashok Kumar and Kishan Lal. In his statement recorded under Section 108 of the Customs Act, 1962 Madan Lal claimed that the seized silver belonged to him and was purchased by him against Bill No. 740, dated 24-8-1979 from Kamal Enterprises of Jodhpur. He also claimed that the cloth covering in which the silver was packed was of Pakistan origin and was made out of the cloth left by his mother who had come from Pakistan. According to Madan Lal the silver which had been in his possession since 1979 was meant to be disposed of in Jaisindhar for meeting the expenses in connection with a marriage in his family. He claimed that he did not want to carry silver with him during his journey by bus since he was fearing that it might be stolen during his bus journey and, therefore, he had sent it through Kana Ram.

It is seen that the claim made by Madan Lal that the seized silver had been in his possession since 1979 was not worthy of credence. Madan Lal was himself dealing in Bullion and it does not stand to reason that he would pack the silver purchased by him in 1979 in a cloth covering which would give [rise] even to the slightest suspicion that it had come from across the border. The cloth covering in which the seized silver was enclosed, as admitted by Madan Lal, was of Pakistan origin.

It follows that the cloth covering along with its content, namely, the seized silver was also brought from across the border. This view finds support from the facts that Madan Lal had chosen not to carry silver or voucher for showing its legal acquisition with him and had instead sent the valuable property through a truck driver by arranging for its concealment in a cavity in the truck. Further Madan Lal claimed that the silver in question was purchased by him from Kamal Enterprises of Jodhpur against Bill No. 740, dated 24-8-1979. However, this claim was proved to be false since according to owner of Kamal Enterprises the silver which he had sold to Madan Lal against Bill No. 740, dated 24-8-1979 was of Haathi Chhap and Kanta Chhap whereas the seized silver did not bear these markings. Collector of Customs, Madras and Ors. v. D. Bhoomull reported in 1983 (13) E.L.T. 1546, the Hon'ble Supreme Court has held that even when no direct evidence of the illicit importation of the goods was adduced by the Department but several circumstances of a determinative character coupled with the inference arising from the dubious conduct of the person from whom the goods were seized had reasonably led to the conclusion drawn by the Collector that they were smuggled goods and as long as the Collector's appreciation of the circumstantial evidence before him was not illegal, perverse or devoid of common sense or contrary to the principles of natural justice there could be no warrant for disturbing his finding.

8. In view of the foregoing, we find no infirmity in the finding of the Deputy Collector as confirmed by the impugned order that the seized silver was of foreign origin and was smuggled into the country from across the border in contravention of Section 3(2) of the Import & Export (Control) Act and was therefore liable for confiscation under Section 111(d) of the Customs Act, 1962. Since Truck No. RJC 3479 in which the seized silver was found to have been concealed in a cavity was used by Kana Ram who was in charge of the truck in his capacity as its driver, for the carriage of the said silver, which has been held by us as smuggled, we confirm the finding in the impugned order that it was liable for confiscation under Section 115 of the Customs Act, 1962.

In view of the facts and circumstances of the case as discussed above it is evident that Madan Lal was knowingly dealing with the seized silver by arranging for its transportation in clandestine manner through concealment in a cavity of a truck

with the connivance of Kana Ram, Driver. We, therefore, hold that the order holding them as liable for penalty under Section 112 of the Customs Act, 1962 is also sustainable. As far as Kishan Lal and Ashok Kumar are concerned, their stand throughout has been that the truck owned by them was used by the driver Kana Ram for the transportation of the seized silver without their knowledge. Since there is no evidence to corroborate the statement of Kana Ram that he was acting under the instructions of the owners of the truck and a part of the money which he was to receive from Madan Lal for transporting the seized silver was to be paid to Kishan Lal and Ashok Kumar, we hold that they can be extended the benefit of doubt.

9. In view of the foregoing and having regard to the value of the seized silver and also the time that has elapsed from the date of seizure, we modify the impugned order to the extent that the confiscated silver shall be released to the owner on payment of redemption fine of Rs. 20,000/- only and the truck used for the transportation of the said silver shall be released to the owner on payment of redemption fine of Rs. 15,000/- only and the penalties imposed on Kishan Lal and Ashok Kumar shall be remitted.

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