(2014) 03 BOM CK 0200

In the Bombay High Court

Case No : Customs Appeal No. 97 of 2012

Ashwini Kumar Tandon APPELLANT

Vs

Commissioner of Customs (Preventive) RESPONDENT

Date of Decision : 20-03-2014

Acts Referred:

Citation : (2014) 305 ELT 350

Hon'ble Judges : S.C. Dharmadhikari, J;G.S. Kulkarni, J

Bench : Division Bench

Advocate : Kiran Doiphode i/b. M/s. V.M. Doiphode and Co, Advocate for the Appellant; V.H. Kantharia and Suchitra Kamble, Advocate for the Respondent

Judgement

1. This Appeal filed by the appellant challenged the order passed by the Tribunal in Appeal No. C/799 & 800/2009. The appeals before the Tribunal were directed against the order passed by the Commissioner of Customs (Preventive), Mumbai. Learned Counsel appearing for appellant would submit that at least on two grounds this appeal raises substantial questions of law. It is submitted that before the Tribunal a specific contention was raised that the proceedings were identical against the appellant and others, they deserved to be dropped against the appellant as the others were exonerated though termed as master mind, then, there was no justification for continuing the proceedings against the appellant and penalising him. The Tribunal, thus, completely erred in holding that the alleged real importer of the cars was exonerated in the first proceedings and therefore, the appellant cannot claim the benefit thereof in the present proceedings particularly when the Department had accepted the exoneration of master mind.

2. It is next submitted that the substantial question of law would arise because the Tribunal has erred in law relying on the statement of co-notice Shri Anoop Gandhi without there being any independent evidence to corroborate the contents of the same.

3. In so far as the first contention is concerned, it is squarely in the realm of appreciation of oral and documentary evidence. The Tribunal has found that the basic facts have not been disputed. The basic facts and allegations are being that there was a smuggling of cars of foreign origin, that is by misusing facility provided under Transfer of Residence Rules. The cars were imported by the syndicate in the names of different passengers who were not the actual owners of the cars but were used as a front to import the vehicles. These persons in whose names the vehicles were imported were eligible to avail of Transfer of Residence Facility. The Transfer of Residence Facility was misused by the syndicate comprising of the present appellant Mr. Ashwini Kumar Tandon, his brother Mr. Satish Tandon and Mr. Anoop Gandhi. They formed a company viz. M/s. ESS International in order to arrange import of cars in the name of Indian passengers who were eligible to avail T.R. facilities. One Mr. D.K. Jain residing at in Delhi was part of the arrangement. One Kuldip Singh was assisting this syndicate to locate and contact passengers who would agree for the cars being imported in their names. If they agreed, they would sign in blank documents and used to import and clear the vehicles.

4. Mr. Gandhi and Ashwin Kumar Tandon placed orders for import of vehicles on a company Inpub in Japan which company belonged to Mr. Satish Tandon, specifying the name of the passengers in whose names the invoices of the vehicle were to be done. The payment of the car was made by Mr. D.K. Jain. The foreign exchange requirement for customs duty was arranged to be transferred to the account of the passengers by Mr. Satish Tandon. Thereafter, those cars would be sold and the payment/purchase price would be sent to the company ''Inpub'' through illegal channels.

5. The Commissioner passed the order in respect of two imported cars imported under the names of Vinod Chandra and Anand Giri by this syndicate and imposed penalty on Ashwini Kumar Tandon and Anoop Gandhi.

6. The matter was carried in appeal to the Tribunal and the Tribunal remanded the same for fresh consideration. In the second round, the Tribunal found no merit in the contentions of the appellant.

7. In dealing with the arguments now raised before us viz. exoneration of one by the Adjudicating Authority whereas imposing penalty on the other, the learned Member found that the roles of Anoop Gandhi and Ashwini Kumar Tandon have been analysed by the Adjudicating Authority in detail. Their involvement in dealing with importing and clearance of the vehicles has been established. The arguments, therefore, that Mr. D.K. Jain was exonerated cannot carry their case any further. The role of D.K. Jain has been referred to. The said D.K. Jain was not, as has been alleged, involved actively in the process of picking up of vehicles and bringing them in India. He was involved in making payment. Therefore, his role cannot be said to be at par with that of present appellants. This is the finding which has been rendered by the Tribunal. It has referred to role of each of the persons and found that there is basis for this complaint. It is

Mr. Ashwini Kumar Tandon and his brother in liaison with Mr. Anoop Gandhi had devised this mechanism for import of cars in the name of various Indian passengers who qualify for T.R. facility. The passengers also have been examined and their statements are referred to. In such circumstances, we do not find that the appellant can gain any advantage or derive any benefit from the exoneration of D.K. Jain. Equally this is not a case where the penalty has been imposed only by relying on the statement of co-notice. There was independent corroboration and from the statement of passengers, the role of the company called Inpub and the documents based on which the entire import was rooted. In such circumstances, the judgment of the Hon''ble Supreme Court cannot be of any assistance, that was rendered in a criminal appeal. The Hon''ble Supreme Court had before it the appeal and which was directed against the order of the High Court against the proceedings under Foreign Exchange Regulation Act, 1973. Apart from the fact that the criminal appeal though directed against the adjudication order, the Hon''ble Supreme Court found that principle that confession of co-accused cannot be treated as substantive evidence, can be pressed into service only for limited purpose. True it is that the Court must seek corroboration of purported confession from independent sources, however, the principle that when there is independent corroboration, the statement can be relied upon is thus absolute and can be accepted. Precisely this is the course adopted by the Adjudicating Authority and the Tribunal in rejecting the version of the present appellant. We, therefore, are of the opinion that on both counts the attempt is to have re-appreciation and reappraisal of the material before the Tribunal. The Tribunal had once remanded the case and on remand the Adjudication Authority imposed the penalty which exercise has been upheld by the impugned order. We are of the opinion that the appeal does not raise any substantial question of law. It is accordingly dismissed. No costs.