(2008) 12 AHC CK 0431

In the Allahabad High Court

Commissioner of Customs APPELLANT

Vs

Shambhu Nath and Another RESPONDENT

Date of Decision : 01-12-2008

Acts Referred:
Customs Act, 1962 — Section 107, 123, 130

Citation : (2009) 239 ELT 427

Hon'ble Judges : Satish Chandra, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish Chandra, J.—This appeal has been filed by the Department u/s 130 of the Customs Act, 1962 against the Order No. 1792-93/04-NB (S) dated 3.12.2004 passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) in Appeal No. C/85-186/04-NB (S).

2. We have heard Sri Rajesh Singh Chauhan for the appellant and Sri Anand Mohan for respondents.

3. The brief facts of the case are that the Preventive Officer of the Customs on the basis of specific information, on 24.12.1999, have intercepted a Maruti Gypsy No. UGE-9446 on Lucknow-Barabanki Highway near Safedabad Railway Crossing. There were three persons in the Gypsy. One Raj Kumar Sharma was driving the Gypsy, while two other occupants namely Shambhu Nath and Lal Bahadur, the respondents, were sitting in the vehicle. Both were residents of district Mathura. On enquiry, both respondents have admitted that they were having silver of foreign origin in the vehicle and told that they were travelling from Gorakhpur to Mathura. It was stated that due to security reasons, Maruti Gypsy was having the secret cavities and the said vehicle is usually hired by the jewellers.

4. On search of the vehicle, 101 slabs of raw silver was recovered from the secret cavities in floor of the vehicle. The goods were confiscated and penalty of Rs. 25,000/- was imposed on each of the respondents vide order 23.8.2000 by

the Commissioner (Customs), Lucknow. Being aggrieved, the respondents approached the Tribunal who vide its impugned order dated 3.12.2004 allowed the appeal with consequential relief. Not being satisfied, the Department is in the present appeal.

5. With this background, learned representative for the appellant stated that there was a specific information with the Preventive Officer that silver was smuggled from Nepal. There were secret cavities in the Gypsy. The statement of Shambhu Nath, respondent No. 1, was recorded on 24.12.1999 u/s 107 of the Customs Act where he admitted the factum of the case for interception of the Maruti Gypsy. He stated that he was traveling from Gorakhpur to Mathura and some brokers were engaged in smuggling of the silver from whom silver was purchased. According to the statement, on 22.12.1999, he met with respondent No. 2 in a Dharamshala at Gorakhpur, who was also dealing with jewellery business. The broker handed over 101 slabs and other pieces of silver total of 187.475 Kgs. of raw material, out of which 92.475 Kgs. was purchased by him and remaining quantity was purchased by respondent No. 2. He also drawn our attention to the statements made by Sri Shambhu Nath. He also submitted that the silver was in small pieces and some sliver slabs were having marking of foreign origin. Lastly, he justified the order passed by the Commissioner (Customs) and made a prayer that the order passed by the Tribunal may kindly be set aside by allowing the present appeal.

6. On the other hand, learned Counsel for the respondents relied on the impugned order of the Tribunal. Further, he stated that in the letter dated 2.1.2000 which was issued by M/s Adarsh Refinery, Gorakhpur wherein it was mentioned that the goods were sold by them. Learned Counsel further pointed out that the list of item shows that the pieces were varying weight and purity. He also submitted that at the relevant time, the price of the silver in Nepal was much higher than the price in India. So, there was no justification for smuggling the silver from Nepal to India. Learned Counsel also referred the statements dated 25.12.1999 of both the respondents which were made before the Superintendent of Central Excise that the items were purchased from the broker and it cannot be treated smuggled silver. He also read out the Circular No. 394/233/88-Cus (AS) of the CBES which laid down the Rules invoking the provisions of Section 123 of the Act. Accordingly, para 2 of the said Circular states as under:

In order to prevent the possibility of undue harassment to law abiding persons possessing small quantities of silver bullion of Indian origin, it has been decided that normally the provisions of Section 123 of the Customs Act, 1962 should not be invoked against persons who are found to be in possession of silver bullion of less than 100 kgs. However, if the silver bullion is found to be in the form of bars weighing 30 kgs. (approximately) each which are being smuggled into the country and also where silver bullion is found to bear foreign markings, the question of seizure may be considered even when the quantity is less than 100 kgs. by an officer not lower in rank than that an Assistant Collector of Customs.

7. He further submitted that the purity of the silver item was varied. Few items were in small pieces and others were big. The said Gypsy was used by jewellers for carrying the jewellery from one station to another station, hence it was having secret cavities for security reasons. The vehicle was taken on hire by both the respondents who were engaged in manufacturing the silver items at Mathura which were also sold at Gorakhpur. On returning journey, they purchased raw silver. Lastly, he justified the order of the Tribunal.

8. We have heard the counsel for both the parties at length and also perused the record.

9. It appears from the Circular (supra) that up to 100 kgs. of silver was exempted from the seizure. 30 kgs. of silver having foreign mark was having the exemption. In the instant case, silver was in small pieces. From the particulars furnished by the seller, the purity of silver was varied from 50% to 99%. The total silver seized was 187.475 kgs. If by giving the benefit of 100 kgs. to each person or impurity, the total silver will fall under the exemption limit as per the Circular (supra). In the instant case, it was stated that the letter dated 2.1.2000 was issued by M/s Adarsh Refinery, Gorakhpur where it was mentioned that the silver in question was sold by them. The Department made no attempt to examine M/s Adarsh Refinery to meet the ends of justice. Similarly, the Department has not examined the owner of the Gypsy. The Commissioner passed the order merely on the statements made by the respondents which were extracted before the Executive Authorities and subsequently the same were denied.

10. In the light of above discussions and by considering the totality of the facts and circumstances, we are of the view that there is no infirmity in the order of the Tribunal dated 3.12.2004 and the same is hereby sustained along with the reasons mentioned therein. The appeal filed by the Department has no merit and is liable to be dismissed.

11. The appeal is hereby dismissed. No order to costs.

