
(2005) 03 CAL CK 0059
In the Calcutta High Court
Case No : CUSTA No. 10 of 2001

Commr. of Cus. (Prev.)

APPELLANT

Vs

Ratan Kumar Saha

RESPONDENT

Date of Decision : 10-03-2005

Acts Referred:

Customs Act, 1962 — Section 108, 108(3), 110, 130, 130A

Citation : (2005) 3 CALLT 265 : (2005) 4 CHN 26 : (2005) 129 ECR 254 :
(2005) 189 ELT 11

Hon'ble Judges : Soumitra Pal, J;D.K. Seth, J

Bench : Division Bench

Advocate : R.K. Chowdhury, for the Appellant;Asok Bhattacharyya and
Aniruddha Bagchi, for the Respondent

Judgement

D.K. Seth, J.—The background:

The seized goods were confiscated. The order of confiscation was challenged by the dealer successfully. The order of confiscation was set aside. Though Section 150 of the Customs Act prescribes that the goods not confiscated can be sold only through auction or tender or by consent of the owner in any other manner after giving notice to the owner. That apart, ordinarily until finalisation of the proceedings the goods could not be sold except under an order passed in connection with the proceedings or in case of perishable goods. However, in this case, the goods were not perishable. Still the department had sold the goods during the pendency of the appeal without following the legal formalities. Therefore, on account of being successful in the appeal, the dealer asked for return of the goods. The goods having been sold, the Customs Authority was disabled from returning the goods. The owner claimed for the value of the goods. The dispute related to the value of the goods. The dealer had given its value in a statement u/s 108 at Rs. 2,40,000/- whereas the seizure value was noted at Rs. 9,09,200/-.

1.1 Now the question arose as to what price for the seized goods are to be paid

to the dealer by the Customs Authority in the absence of the goods, which were supposed to be returned to the dealer. The learned Tribunal in its order dated 25th March 2001 (73) ECC 81]] following three decisions of the Tribunal in Oswal Spinning and Weaving Mills Ltd. Vs. Collector of Customs and Another, ; 1990 (28) ECR 395 and 1990 (31) ECR 677 held that the seizure value is to be returned not the market value. However, it had observed that it was not understood as to how such a high value goods could be sold by the revenue during the pendency of the appeal at such a lower rate, which is almost 1/8th of the seizure value. However, it is neither here nor there.

The question:

2. The reference u/s 130 of the Customs Act, 1962 prior to its amendment (now Section 130A) was admitted on the ground whether the injured party is entitled to payment of the market value of the goods prevalent at the time of the seizure valued at by the revenue in lieu of the goods having already been sold during the pendency of the appeal.

3. Both the learned Counsel had addressed the Court on the question elaborately. Various decisions have been cited.

Decision by Jurisdictional High Court: Binding:

4. Before we proceed to decide the said question, we may refer to the order passed by the learned Tribunal itself at page 22 of the Paper Book. The Tribunal had discussed the decision in Union of India (UOI) and Others Vs. Shambhunath Karmakar and Others, of this Court dealing with the similar question laying down that the market value has to be returned. This High Court being the Jurisdictional Court, the decision thereof is binding on the Tribunal. It had also considered the decision in Dhian Singh Sobha Singh and Another Vs. The Union of India (UOI), ; State of Gujarat v. Memon Md. Haji Hasan AIR 1967 SC 885 and the decision of Bombay High Court in Giridharlal Kalyandas Advani Vs. Union of India, and Gauhati High Court in Biplab Rakshit Vs. Collector of Customs, which took the similar view. It appears that in all these decisions laid down that the market value not the seizure value is to be returned. The learned Tribunal itself had noted the same in its judgment. It is not correct to follow the decision of the Tribunal after having noted the decision by the Jurisdictional High Court and the Supreme Court as also by other High Courts taking contrary view. The learned Tribunal was not supposed to follow the view of the Tribunal when there are decisions by the Jurisdictional High Court or by the Supreme Court, which are binding on it.

Section 108 : Declaration : Effect of:

5. A reference to Section 108 was made by Mr. Chowdhury. By reason of Sub-section (3) thereof the person, upon whom summons is issued, is bound to state the truth. A statement made pursuant to a summons u/s 108, thus binds the maker of the statement. The person, who makes such statement u/s 108,

particularly, by the owner or the dealer of the goods or the person from whom the goods were seized, becomes bound by such statement and is estopped from disputing the same unless the goods are evaluated through an established process and such valuation is accepted by the parties or is judicially acceptable.

5.1 In the present case, it is apparent that the dealer himself had given the value at Rs. 2,40,000/- in his own statement u/s 108. Admittedly, the seizure value was entered into in terms of Section 110. Section 110 does not prescribe any mode of evaluation of the goods seized to be so authenticated to be acceptable to the Court or the Tribunal. In case of a dispute between the parties, with regard to the valuation of the goods, unless there is an adjudication on the question of the value of the goods since settled between the parties or by reason of certain orders passed in the proceeding holding the value put forth at the time of seizure as the value of the goods, the same cannot be accepted to be the value of the goods. At the same time, the value of the goods put forth by the dealer being his own admission, he cannot get rid of it unless such valuation is overruled and set aside in a proper adjudication proceeding. From the records before us, we do not find that on the question of valuation, there was any adjudication. The reference to the seizure value in the decision without any such adjudication cannot bind the parties since it was not in issue in the proceeding. A decision in a case is binding when it determines the issue between the parties. So long adjudication of the valuation was not an issue, the reference to the seizure value would not bind the parties finally as to the value of the goods.

5.2 At the same time, this Court in the case of Sambhu Nath Karmakar (supra) and the Supreme Court in the case of Dhian Singh (supra) laid down that it is the market price, which is to be returned to the owner of the goods. However, in the case of Memon Md. Haji Hasan (supra), the Apex Court had held that the Government is liable to return the goods or value to the owner who had right to determine the same. Therefore, in this decision the right to determine the valuation has been given to the owner. In the present case, the owner had valued the goods at Rs. 2,40,000/- as such estopped from contradicting the valuation given by him. Unless otherwise proved to the contrary, such valuation is to be presumed to be the market value. Therefore, when disabled to return the goods, the Government is supposed to pay the price being the market value. If it is to be taken by the owner, then it would definitely be the market value and not the seizure value. The Bombay High Court in Giridharlal Kalyandas Advani (supra) and the Gauhati High Court in Biplab Rakshit (supra) have taken the same view. At the same time, Delhi High Court in the case of Kailash Ribbon Factory Ltd. Vs. The Commr. of Customs and Central Excise and Another, held that the goods are supposed to be returned and in case it is sold the value thereof is supposed to be paid.

5.3 In the facts of this case, the sale of the goods might cause immense loss to the petitioner, but when the petitioner himself valued the goods at Rs. 2,40,000/- all by himself in a statement u/s 108 which has an evidentiary value, he is

estopped from claiming anything more than that as market value unless otherwise established. But at the same time, we cannot but observe that the Department had committed an error in selling the goods during the pendency of the appeal for which the Department ought to have fixed liability and taken appropriate steps for the purpose of keeping its house in order by awarding exemplary punishment and recovering the loss fixing the liability against the persons responsible after holding proper enquiry, if necessary, even after lapse of such a long time.

Conclusion:

6. In the facts and circumstances of the case, as discussed above, the respondent is entitled to the market value of the goods as declared by him u/s 108 viz: at Rs. 2,40,000/-, in the absence of any authenticity of the seizure value given in the seizure document by the Department having been established and in the absence of any adjudication with regard to the market value.

6.1 Having regard to the loss suffered by the dealer having been successful in the proceeding ultimately, the dealer cannot be made to suffer without the interest. As such, he would be entitled to interest on the market value given by him @ 9% per annum simple on the principle enunciated in the case of Kailash Ribbon Factory Ltd. (supra) and the decision by a learned Single Judge of this Court in the case of Bhogilal Mehta Vs. Union of India (UOI), in which the principle of grant of interest was upheld. Such interest should be payable from the date of the judgment by the learned Tribunal, namely, 25th March, 2000.

Order:

7. Thus, the appeal is allowed. The order of the learned Tribunal is hereby set aside. The Department shall refund/pay to the dealer/respondent the sum of Rs. 2,40,000/- as principal together with interest calculated thereon @ 9% per annum payable from 25th March, 2000 till the date of payment within a period of 3 (three) months from date.

7.1 The reference is answered in the affirmative in favour of the Department.

7.2 Xerox certified copy of this Judgment be made available to the parties, if applied for, on the usual terms.