

(2024) 04 CESTAT CK 0018

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 52304 Of 2022

Dr. Suneet Soni

APPELLANT

Vs

Commissioner (Appeals), Central Excise & CGST

RESPONDENT

Date of Decision : 09-04-2024

Acts Referred:

Customs Act, 1962 — Section 2(iii), 2(22), 77, 111, 111(D), 111(L), 112(a), 112 (b) (i), 113, 114AA, 128, 128A, 129, 129A, 129A(a), 129A(1)(a), 130

Citation : (2024) 04 CESTAT CK 0018

Hon'ble Judges : Dr. Rachna Gupta, Member (J)

Bench : Single Bench

Advocate : B.K. Singh Vandana Singh, Rohit Issar

Final Decision : Disposed Of

Judgement

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Dr. Rachna Gupta, Member (J)

1. Prior learned counsel for appellant could begin his submissions learned Departmental Representative has objected the jurisdiction of this Tribunal in view of Section 129A of Customs Act, the proviso (a) to sub-clause 1 therein, according to which the appeal against any order passed by Commissioner (Appeals) under Section 128A of the Act shall not lie before CESTAT in case the said order relates to "Baggage". The said submission is not accepted by the appellant/ assessee and the issue of jurisdiction was prayed to be treated as preliminary issue. Accordingly, the arguments on the preliminary issue, about jurisdiction of this Tribunal to entertain the impugned appeal, heard.

2. Learned counsel for the appellant has mentioned that the order of Commissioner (Appeals) as has been challenged in the impugned appeal has confirmed the order of absolute confiscation of Indian currency of Rs. 4,09,000/- (INR) being improperly exported and then improperly imported over and above the limit prescribed by a notification issued by FEMA. This particular observation

is sufficient to hold that the subject matter of the present appeal is Indian Currency instead of it being "Baggage". Decision of Hon"ble Calcutta High Court in the case of Commissioner of Customs versus Vinod Kumar Shaw in Customs Appeal No. 12 of 2003 dated 14.12.2010 is relied upon. It is further submitted that Customs Act itself distinguishes "Currency" from "Baggage". The definition of goods in Section 2 (22) of Customs Act is relied upon. Decision of High Court of Madras in the case of Commissioner of Customs (Air), Chennai versus Veerachi Vithayaphalart 2014 (303) E.L.T. 49 (Mad.) has also been relied upon to emphasise that "Currency" is different from "Baggage".

3. The Department, on the other hand, has laid emphasis upon the proviso (a) in Section 129A (1) of the Act. The said proviso restricts Tribunal from entertaining appeal against such orders as are mentioned in clause (a) to (c) of said proviso. It is impressed upon that the words used in the said proviso (a) are "any goods imported or exported as "Baggage".

4. It is submitted that as per definition of goods in Section 2 (22) of Customs Act, "Currency" is defined to be called as "Good". In the present case, currency is found exported as well as imported in appellant"s "Baggage". Hence the sub-clause (a) of the proviso of Section 129 is applicable and appeal before the Tribunal is not maintainable. The Departmental Representative relied upon the decision of Madras High court in the case of The Principal Commissioner of Customs (Air Port) versus Ahamed Gani Natchiar 2022 (10) T.M.I. 100 – Madras High Court. The appeal is prayed to be dismissed being beyond the jurisdiction of this Tribunal.

5. Having heard the rival contentions of the parties I observe and hold as follows :

The scope of adjudication of the impugned preliminary issue is to find as to whether, this Tribunal (CESTAT) is competent to decide the impugned appeal which is against the order passed by Commissioner (Appeals) ordering confiscation of Indian Currency recovered from the appellant"s bag which was left at Bali airport on two grounds : (i) It being found improperly exported from and improperly imported into India and (ii) It being beyond the permissible limit prescribed by FEMA (Rs. 25,000/- per person).

6. To adjudicate the same, I foremost peruse the factual aspect of the appeal. It is clear that the appellant was traveling back from Bali to India, however, had forgot his hand bag at Bali Airport along with INR 4,34,000/- therein. It is apparent that the Indian Currency of INR 4,34,000/- was handed over in India by the airlines staff to the appellant on 09.07.2019 in presence of the customs authorities. Since, the Currency was in excess of the permissible limit of Rs. 25,000/- per person as provided under FEMA vide Notification dated 29.12.2015, that amount over and above Rs. 25,000/- i.e. Rs. 4,09,000/- (INR) was proposed to be confiscated under Section 111 read with Section 113 of the Customs Act with the proposal of imposing penalty on the appellant under Section 112 (a) and

112 (b) (i) and 114AA of Customs Act, 1962. The said proposal has been confirmed by original adjudicating authority vide order-in-original No. 01/2021-CUS-AC dated 22.07.2021. The said order has been modified by order-in-appeal bearing No. 121/2022 dated 30.08.2022 to the extent that penalty of Rs. 1,00,000/- imposed under Section 114AA of the Customs Act has been set aside. The said order has been challenged before this Tribunal.

7. For the present purpose of adjudicating the preliminary issue of Jurisdiction of this Tribunal. It is to be seen as to whether the said order of confiscation is with respect to any goods imported or exported as "Baggage". For the purpose, meaning of "Baggage" is checked. As per the dictionary meaning "Baggage" connotes suitcases or bags or containers or boxes carried by a traveler for his or her goods or personal belongings on a journey. Section 2 sub-section (iii) of Customs Act, 1962 also defines "Baggage" to include unaccompanied "Baggage", but does not include motor vehicles. Definition of Goods also is perused. Section 2 sub-section (22) of the Customs Act define Goods as follows :

"goods" includes-

- (a) vessels, aircrafts and vehicles;
- (b) stores;
- (c) baggage;
- (d) currency and negotiable instruments; and
- (e) any other kind of movable property;

Bare perusal shows that "Baggage" and currency are two separate articles but both are called as goods and Baggage is the bag carried by a traveller on his journey. Simultaneously Section 129A (a) of Customs Act is perused. It reads as follows:-

"(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order –

- (a) A decision or order passed by the 301 (Commissioner of Customs) as an adjudicating authority ;
- (b) An order passed by the 302 [Commissioner (Appeals)] under section 128A ;
- (c) An order passed by the Board or the Appellate 301 [Commissioner of Customs] under section 128, as it stood immediately before the appointed day ;
- (d) An order passed by the Board or the 301 [Commissioner of Customs], either before or after the appointed day, under section 130, as it stood immediately before that day ; 303

[Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order

referred to in clause (b) if such or relates to, -

(a) Any goods imported or exported as Baggage;"

8. A cogent reading of all the above provisions/definitions makes it clear that irrespective currency is different from Baggage, but currency is called as goods as per Section 2 (22) of Customs Act and if it is carried in bag by the traveler on his journey abroad currency will definitely be called as the goods exported from/ imported into India. Also that Sub-clause (a) of proviso to Section 129A bars Jurisdiction of this Tribunal to accept an appeal against the order of Commissioner (Appeals) if it relates to importation or exportation of any goods as Baggage.

9. As already observed above that appellant had kept currency in his baggage which he was supposed to bring into India but forgot the baggage having Indian currency/Goods in said "Baggage" at Bali airport. The said Baggage when was brought to India and was inspected it was found carrying INR of value more than permissible one. The order confiscating the same has been passed specifically under Section 111 (L), considering the recovered currency being beyond permissible limit (Prohibited) as "Goods" imported in "Baggage" without a declaration required under Section 77 of Customs Act. Any order with respect to said currency if passed by Commissioner (Appeals), appeal before CESTAT against said order is prohibited under proviso to Section 129A to be. These observations are sufficient for me to hold that this Tribunal has no jurisdiction to entertain the impugned appeal.

10. The very perusal shows that the context of confiscation of Indian Currency in the present appeal, is one recovered from Baggage which the appellant has failed to declare under Section 77 of the Act. The penalty has also been imposed under Section 111D and 113D due to import being contrary to the prohibition imposed under FEMA is sufficient for me to hold that the context of the present appeal is "Baggage". In terms of Section 129A, sub-clause (a) of the proviso therein, the appeal in such case has to be filed before the Revisional Authority and is not maintainable before this Tribunal.

11. The decision of Calcutta High Court in Vinod Kumar Shaw (supra) case is observed to not to be applicable to the given set of circumstances. The said decision has categorically held that question of jurisdiction is relatable to the question of fact. When the case proceeds on the basis of Baggage it has to be understood whether the subject matter is Baggage or not. The subject matter before Calcutta High court was held to be Indian currency simpliciter whereas in the present case the subject matter is the confiscation of Indian currency not only under Section 111D also under Section 111 (L) but that too beyond permissible limit currency being imported/exported in "Baggage".

12. In the light of entire above discussion, I, hold that present is the appeal against an order which has been passed with respect to Currency i.e. goods improperly exported and improperly imported as Baggage. Hence, this Tribunal is

held to have no jurisdiction to try the impugned appeal. Resultantly the appeal memo with its entire record is directed to be returned to the appellant with the liberty given to him to avail appropriate statutory remedy by way of filing a revision before the appropriate authority within the prescribed period of limitation. Period of impugned proceedings has to be excluded while calculating the said prescribed period of limitation. The preliminary issue stands accordingly decided and appeal stands disposed of being returned.