Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 05/09/2026

(2016) 06 BOM CK 0143

In the Bombay High Court

Case No : Customs Appeal Nos. 24 and 75 of 2015 with Notice of Motion Nos. 2190-2191 of 2015

Fayaz Gulam Godil — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 06-06-2016

Acts Referred:

Citation : (2016) 338 ELT 42

Hon'ble Judges : S.C. Dharmadhikari and Dr. Shalini Phansalkar-Joshi, JJ.

Bench : Division Bench

Advocate : S/Shri Sujay N. Kantawala and Brijesh Pathak, Advocates, for the Appellant; Shri Pradeep S. Jetly, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

1. We have heard Mr. Kantawala in support of these appeals.

2. In his submission the appeals raise substantial questions of law and as proposed in the Memo of Appeal in Appeal No. 24 of 2015 which is identical to the other appeal. Mr. Kantawala has taken us through these proposed questions to submit that one of them is based on the contention raised before the Tribunal that a Division Bench judgment of this Court in the case of Rostam Parvaresh v. Union of India reported in 2010 (259) E.L.T. 342, would bind the Tribunal. Secondly, whether it is legal and proper for the Tribunal to not consider the position with regard to applicability of Section 111 and Section 113 of the Customs Act, 1962.

3. This is not a case where the Indian currency was tried to be smuggled out of India. This was a case of an alleged smuggling of foreign currency, but the act was complete on the appellants leaving the Indian shores and reaching Hong Kong. Thereafter, having returned from Hong Kong allegedly with the currency does not merit application of Section 113 of the Customs Act, 1962. Rather, Section 111 should have been applied. Thirdly, the discretion insofar as the

option to pay fine in lieu of confiscation should have been exercised in favour of the appellants. In large number of cases even today, the Revenue has been allowing the option to pay fine in lieu of confiscation. There cannot be different yardsticks as between the others who default in compliance with law and the appellant before this Court.

4. He, therefore, submits that the appeals be admitted.

5. We are unable to agree with Mr. Kantawala and for more than one reason. The facts are not in dispute. The two appellants before us smuggled to Hong Kong, foreign currency concealed in their baggage. These persons were deported back from Hong Kong. Upon landing back in India, they were intercepted by the Directorate of Revenue Intelligence officials after crossing the green channel on their arrival from Hong Kong. On examination, it was found that the foreign currency was concealed. On search of one of the persons the foreign currency was found. Thus, the statements were recorded, Panchanamas drawn and after the requisite formalities were completed, both confiscation proceedings and criminal prosecution were launched.

6. It is not as if the Tribunal was unaware of the fact that the statements attributed to these persons and recorded by the authorities were sought to be retracted. However, we do not find that in law the authorities were prevented from issuing a show cause notice. The Customs Act, 1962, refers to both the terms - "export" as defined in Section 2(18) and the term "import" as defined in Section 2(23). The term "goods" as defined in Section 2(22) includes currency and negotiable instruments. The term "prohibited goods" is defined in Section 2(33) and reads as under :

"2. Definitions. - (1). ... ...

(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported, have been complied with."

7. The act of smuggling in relation to any goods is covered by Section 2(39). The Tribunal has found from the facts and which are undisputed that the foreign currency could not have been taken out of India unless compliance?s were made with the other law for the time being in force, namely, Foreign Exchange Management Act, 1999, read with Foreign Exchange Management (Current Account Transaction) Rules, 2000. Once this was the act attributed to these persons, then, it was the discretion of the adjudicating authority to allow redemption or to resort to absolute confiscation. The Tribunal once having been apprised of a discretionary power available under Section 125 was only required to consider the two submissions canvassed before us by Mr. Kantawala.

8. We find that they have indeed been considered. In the present case, what was

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/fayaz-gulam-godil-appellant-hash-…

attributed to the persons was an act clearly within the meaning of Section 113 of the Customs Act, 1962. The foreign currency in this case was attempted to be improperly exported. It is one thing to say that the currency may have been taken without complying with FEMA and the Rules thereunder, but on reaching the foreign country, these persons were deported. On deportation, they boarded a flight to return to India, but with the currency with them. It is these goods which were taken away without the above compliance. They were confiscated. The definition of the term ''prohibited goods'' has been understood and applied in the above circumstances. The question was how they should be dealt with in the discretionary power of the authority. Whether there should be absolute confiscation or a redemption permitted. We do not find either in the order of admission of the Customs Appeal No. 107 of 2012 or in the Division Bench order relied upon by Mr. Kantawala anything which would enable us to entertain the present appeals. Before the Division Bench in Rostam Parvaresh (supra), the argument was that the Revisional Authority failed to consider a specific contention raised by the petitioner based on various judgments of the appellate as well that of the Revisional authority wherein the entire confiscated currencies have been ordered to be released on payment of redemption fine. It is that contention and non-examination of which led the Division Bench to interfere in its discretionary and equitable jurisdiction under Article 226 of the Constitution of India to direct the Revisional Authority to consider it and pass a fresh order.

9. On the other hand, in this case we find that the contentions as raised before us were specifically raised duly noted and considered by the Tribunal. The Tribunal found that once this is an admitted case of illegal export of foreign currency from India by concealing the same in baggage and considering the substantial quantum of currency seized, the discretion ought not be exercised so as to allow release of the same by paying redemption fine, then, this is not a case of any perversity or an error of law apparent on the face of the record. Rather, this is a case where the prohibited act was rightly dealt with. This is not a case where any other provision but Section 113 could be applied. In the facts peculiar to this case, the invocation and application of Section 113 also was permissible. The other appeal, namely, Central Excise Appeal No. 75 of 2015 impugns only the imposition of penalty. For the reasons indicated above, that also fails. Additionally we find that the penalties were rightly imposed on the appellants. Their complicity and involvement in the illegal act is established.

10. It is in such circumstances that we do not deem it proper to entertain these appeals. They do not raise any substantial question of law. They are, accordingly, dismissed.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/fayaz-gulam-godil-appellant-hash-…