(1976) 06 MAD CK 0021

In the Madras High Court

Case No : Writ Petition No. 1928 of 1976

Kanniahlal Jethoji APPELLANT

Vs

Central Board of Excise and Customs, Bharat Sarkar Kendriyautpadan Shulk Talka Seema Shulk Board, New Delhi and others RESPONDENT

Date of Decision : 21-06-1976

Acts Referred:
Customs Act, 1962 — Section 112(b), 135(b)

Citation : (1976) LW(Cri) 217

Hon'ble Judges : Mohan, J

Bench : Single Bench

Advocate : K.N. Balasubramanian, for Mr. K. RengavajJula, for the Appellant;

Final Decision : Dismissed

Judgement

Mohan, J.—This matter arises under Customs Act. The writ Petitioner seeks to quash the order of the Central Board of Excise and Customs dated 26th March 1973, whereunder a penalty of Rs. 21,000 was imposed on the Petitioner for contravention of Section 112(b) of the Customs Act (hereinafter referred to at the Act).

2. On 30th April 1970, the Assistant Collector of Customs issued a search warrant to search the premises No. 81 Narayana Mudali St, Madras 1, where the Petitioner was slaying and which premises was in his possession. Certain goods of foreign origin including 1524 watches and 41 watch straps and 54 reels of radiant yarn, the market value of these goods being about Rs. 1,60,210, were seized under a mahazar dated 30th April 1960. The Petitioner himself gave a statement In which he admitted that these watches, radiant yarn reels, watch straps etc, were of foreign origin and he kept the watches for the purpose of sate. A show cause notice was issued in October 1970. The Petitioner furnished a reply stating that the statement was not voluntary. An order of adjudication was passed under which the Assistant Collector held that the goods would be liable

for confiscation. Criminal proceedings were also launched against the Petitioner which initially ended in conviction tor six months and also payment of fine of Rs. 250. Against that criminal proceeding, Criminal App. No. 389 of 1973 was filed and the Petitioner was acquitted. However, against the order of confiscation, when the matter was taken up by the Board, by the impugned order dated 26th March 1973, the Board confirmed the penalty of Rs. 25,000. It is in these circumstances, the present writ petition has been preferred.

3. Mr. K. N. Balasubramaniam, the learned Counsel, submits only one point for my consideration. Inasmuch as the Petitioner was acquitted in criminal proceedings by the judgment of this Court rendered in Crl. A. No. 389 of 1973, the benefit of the same judgment must be given even with regard to the proceedings before the Board, since the wording of Section 112(b) and S. 135(b) of the Customs Act s identical. I am unable to accept this contention. The learned Judge while acquitting the writ Petitioner held that the prosecution must have let in evidence in respect of the occupation of the premises by the Appellant. Therefore, the accent there was, the burden of proof on the prosecution. However, as far as the proceedings before the department are concerned, it is the duty of the Petitioner to have proved that he has nothing to do with the goods which undoubtedly were of foreign origin. S. 112(b) is very wide in its amplitude and this case will clearly fall within the clause in any other manner dealing with any goods which he knows of has reason to believe are liable to confiscation u/s 111 ''. Be it noted that in this case, the Petitioner was clearly aware that the goods were of foreign origin and this is not questioned by him. Having regard to that position, if the Petitioner has not chosen to disown the goods, as found by the Board, undoubtedly he will be liable u/s 112(b). I am unable to see any error of law with regard to this finding of the Board. Hence, the writ petition will stand dismissed.

