
(2015) 01 DEL CK 0131

In the Delhi High Court

Case No : Review Petition No. 429/2014 in W.P. (C) No. 4536/2013

Ram Kumar

APPELLANT

Vs

Commissioner of Customs

RESPONDENT

Date of Decision : 16-01-2015

Acts Referred:

Customs Act, 1962 — Section 108, 11, 113(b), 113(d), 113(d)(h)(i)

Citation : (2015) 320 ELT 368 : (2015) 50 GST 456 : (2015) 34 GSTR 11

Hon'ble Judges : Sanjeev Sachdeva, J.; Sanjiv Khanna, J.

Bench : Division Bench

Advocate : Sudhir Nagar, Mohit Singh and Pujya Kumar, for the Appellant;
Shruti Yadav, Advocates for the Respondent

Judgement

Sanjiv Khanna, J.

REVIEW PETITION NO. 429/2014

1. This is an application for review of the order dated 22nd July, 2013 passed by this Bench dismissing the writ petition filed by the applicant. For the sake of completeness, we are reproducing the order dated 22nd July, 2013, which reads as under:-

"The order impugned in this writ petition, which is filed in the month of July, 2013, is dated 09.10.2012. The said order passed by the Joint Secretary to Govt. of India under Section 129DD of the Customs Act, 1962. Thus there is a delay of nearly nine months in preferring the present writ petition.

During the course of hearing, learned counsel for the petitioner has submitted that the petitioner is a poor man and had to arrange sources for filing of the petition. The said stand does not support the case of the writ petitioner but, on the other hand, confirms the fact that the petitioner was a mere carrier and there was a third person who was involved. 21900 UAE Dirhams and Rs.19,80,000 in cash were recovered from the baggage/on petitioner in person while going to Dubai from Jaipur via Delhi. The petitioner claims that the said money should be

repaid/returned on payment of redemption fine. In view of the above circumstances, we are not inclined to entertain the present writ petition and the same is dismissed."

2. Learned counsel for the applicant relied upon Section 125 of the Customs Act, 1962 (Act, for short), which reads as under:-

"SECTION 125. Option to pay fine in lieu of confiscation. - (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit :

Provided that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon. (2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods."

3. It is highlighted that by amendment inserted by way of Act No. 80 of 1985, the Legislature had incorporated the words "or, where such owner is not known, the person from whose possession or custody such goods have been seized" would have an option to pay fine in lieu of confiscation of such goods. Another submission raised by the petitioner is that he is the owner of the foreign currency, i.e. 21,900/- UAE Dirham (about Rs.3.67 lacs as per present exchange rate) and Rs.19,80,000/- in cash, which were recovered and seized from his wallet and his baggage, respectively, by the Customs" authority at the Indira Gandhi International Airport, Delhi, while going to Dubai. The applicant had boarded the flight from Jaipur.

4. In order to appreciate the contention, we would like to reproduce in brief the relevant facts and the findings recorded by the Revisionary Authority.

(a) The applicant had boarded the Indian Airlines flight from Jaipur to Dubai via Delhi but was asked to de-board at Delhi and his baggage was unloaded. Upon search, Indian currency of Rs.19,80,000/- and 21900/- UAE Dirham were recovered.

(b) On 3rd November, 2009, the applicant was arrested and his statement under Section 108 of the Act was recorded. He admitted that Vinod Kumar Saini and Tulsi Ram had given him the said currency with the direction to deliver the aforesaid amount to one Rakesh, who would collect the money from him at Dubai.

(c) A show cause notice under Section 124 of the Act, dated 21st April, 2010 was issued to the applicant, proposing confiscation of the goods under Sections

113(b) and 113(h) and for imposition of penalty under Section 114 of the Act.

(d) The petitioner then claimed that he is a semi-literate person, who had been working in Dubai for last 18 years and had brought his earnings to India. On 2nd November, 2009, he had decided to take his life savings back to Dubai with a view to start a new business.

(e) He did not realise and know that for taking foreign currency and Indian currency out of India, prior permission from the Reserve Bank of India was needed and mandated.

5. The applicant contested the proceedings resulting in order-in-original dated 29th October, 2010 to be passed by the Additional Commissioner of Customs, Indira Gandhi International Airport, Delhi. The order-in-original directed confiscation of the currency under Sections 113(d) and 113(h) of the Act read with Foreign Exchange Management Act, 1999 and the Rules made thereunder. However, in exercise of power conferred under Section 125 of the Act, the adjudicatory authority gave an option to the applicant to redeem the currency seized on payment of fine of Rs.1,50,000/-. Penalty of Rs.2,00,000/- under Section 114 of the Act was imposed.

6. Revenue preferred an appeal before the Commissioner (Appeals), but it appears that the first appellate authority upheld the direction regarding the redemption of the currency on payment of fine of Rs.1,50,000/-. Copy of the grounds of appeal and the order passed by the Commissioner (Appeals) are not on record and were not filed with the writ petition.

7. Aggrieved, Revenue preferred a Revision petition before the Government of India under Section 129DD of the Act. The applicant also filed a Revision Petition. The Revision petition filed by the Revenue stands allowed vide order dated 9th October, 2011, holding inter alia, that the authorities had erred in allowing redemption of the currency as the applicant was a mere carrier of goods and the currencies did not belong to him.

8. Learned counsel for the applicant is right that in paragraph No. 9 of the impugned order, the Joint Secretary to the Government of India has observed that the currencies did not belong to the applicant and the same were liable to be confiscated absolutely as there was no original owner of the goods. It is accordingly submitted, that amendment made to Section 125 of the Act would be applicable. However, if we read the entire reasoning given by the Joint Secretary to the Government of India, objectively and holistically, the position becomes clear. For the sake of clarity, we would like to reproduce paragraph Nos. 7 and 8 of the said order, which read:-

"7. On perusal of records, it is observed that said Indian as well foreign currencies found concealed by the passenger were recovered by Customs during the personal search/examination of baggage. Shri Ram Kumar was not the owner of the goods but only the carriers of said currencies. He did not have a valid

permission for export said currencies as required under the provision of Foreign Exchange Management (Export and Import of currency) Regulations 2000 and therefore the same were rightly confiscated under section 113(d)(h)(i) of Customs Act, 1962 and penalty was also rightly imposed under section 114 ibid for violation of section 77 and 11 of Customs Act r/w regulation 3 (1) and 5 of Foreign Exchange Management (Export and Import of Currency) Regulations 2000. Shri Ram Kumar filed appeal for reduction of find (sic, fine) and penalty whereas department also filed appeal before Commissioner (Appeals) for ordering absolute confiscation of seized currencies. Since the passenger was not the owner of goods, Commissioner (Appeals) rejected both the appeals and upheld the impugned Order-in-Original. Now both parties, Shri Ram Kumar as well as department have filed their respective revision applications on the same grounds.

8. Government observes that Shri Ram Kumar in his statement dated 03-11-2009 recorded under section 108 of Customs Act, 1962 admitted that the aforesaid currency was given to him by one Shri Vinod Kumar Saini (aged about 30-32 years, resident of Joda Wali Dhani, Nawalgarh, Jhunjhunu (Rajasthan) for handing over the same to one Shri Rakesh who would collect the money from him in Dubai: that Shri Rakesh had taken his mobile number 00971505492931 but he did not give his own contact number to him; that Shri Vinod Kumar Saini and Shri Tulsi Ram (Owner of vehicle) came to see him off at Jaipur Airport; that Shri Vinod Kumar Saini mobile number was 9772170398 and he very well knew and recognised them; that he was aware that he had Indian currency concealed in sweet boxes and card board boxes (gattas); that for safe delivery of the currency in Dubai to one Shri Rakesh he was to get 600 UAE Dirhams and due to greed he agreed to carry the currency; that he knew that carrying, importing and exporting Indian currency to Dubai was illegal as he had been coming from/going to Dubai for the past many years.

Further, during the course of investigation, summons was issued to Shri Vinod Kumar Saini and his statement under section 108 of the Customs Act, 1962 was recorded on 09-01-2010 wherein he inter alia stated that he knew Shri Ram Kumar that he had been working in Dubai for the past many years; that, on 02-11-2009, he went to Sanganer Airport, Jaipur to see off Shri Ram Kumar; that on being shown the call details he admitted incoming and outgoing calls received from/made to Shri Rakesh; that on 02-11-2009, he talked to Shri Rakesh Kumar and Shri Tulsi Ram (his relative) from his mobile telephone; that the Indian and foreign currency recovered from Shri Ram Kumar did not belong to him (Shri Vinod Kumar Saini) and also he had not given the same to Shri Ram Kumar; that Shri Ram Kumar was telling a lie and he did not know why he was implicating him; that he neither knew any person by the name of "Rakesh" in Dubai nor had he ever talked to "Rakesh"; that he had neither given any Indian or foreign currency to Shri Ram Kumar nor had he promised him to deliver the currency to a person by the name of "Rakesh" on a consideration of 600 UAE Dirhams; etc."

9. It is clear from reading of the aforesaid two paragraphs that the applicant had initially in his statement under Section 108 of the Act, admitted that the currency was given to him by Vinod Kumar Saini, resident of Jhunjhunu, Rajasthan for handing over to one Rakesh, who was to collect the same from Dubai. He had also given the mobile number of Rakesh and Vinod Kumar Saini. The applicant had also named Tulsi Ram, the owner of the vehicle and that he along with Vinod Kumar Saini had dropped him at the Jaipur Airport. Statement of Vinod Kumar Saini was recorded wherein he admitted that he had gone to the airport at Jaipur to see off the applicant. Vinod Kumar Saini accepted that incoming and outgoing calls were exchanged between him and Rakesh. Similar calls have been also received by Tulsi Ram, his relative. The Revisionary Authority thereafter in paragraphs 8.1 and 8.6 recorded as under:-

"8.1 As per above said statement of Shri Ram Kumar passenger, he was carrier of said currency and the currency was brought in concealed manner for monetary considerations. The passenger was driver by profession. During earlier proceedings, the passenger did not claim currencies. Rather he argued that said currencies belong to somebody else. He has not claimed the currencies even in revision application. So claiming the ownership of said currency during hearing held on 13-08-2012 is not acceptable. The investigation conducted by customs and statement of passenger Shri Ram Kumar categorically reveal that said currencies did not belong to Shri Ram Kumar and he acted as carrier on behalf of somebody else. Hon'ble Supreme Court has held in the case of Surjeet Singh Chhabra Vs. Union of India and others, has observed that statement made before Customs Officer though retracted within 6 days, is an admission and binding since Customs Officers are not police officers. As such, the statement tendered before Customs is a valid evidence under law.

xxx

8.6 Government notes that in view of principles laid down in the above said judgments, the goods attempted to be imported/exported is a concealed manner in violation to relevant statutory provisions are to be absolutely confiscated."

10. In the aforesaid paragraphs, the Revisionary Authority held that the applicant was merely a carrier of the said currency, which the applicant wanted to take out of India for monetary considerations. The Indian currency was concealed to avoid being detected. It is clear from the aforesaid finding that the applicant was not treated as the owner of the said currency and as far as ownership is concerned, it was clearly implied that the ownership belonged to Vinod Kumar Saini, who had given the said currency to the applicant for being taken to Dubai. It was meant to be delivered to Rakesh.

11. Neither with the writ petition nor with the present application, any details or particulars of any order/s against Vinod Kumar Saini have been filed. It is also not indicated whether any proceedings were initiated against Vinod Kumar Saini and the effect thereof. In view of the aforesaid position and the above discussion,

we do not think that the applicant is entitled to benefit of Section 125 of the Act. In our order dated 22nd July, 2013, we had noticed that there was a delay and laches in filing of the writ petition. The impugned order is dated 9th October, 2012 and the writ petition was filed in July, 2013. Before us, it was contended that the applicant was a poor man and had to arrange for resources for filing the writ petition. The aforesaid stand, we had observed, confirms and reinforces the finding that the applicant was merely a carrier. The currency belonged to a third person. The reference to the third person obviously was to Vinod Kumar Saini. It is quite apparent that the paltry fine of Rs.2 lacs imposed on the applicant was in view of the fact that he was not the owner. It would be interesting to reproduce what the applicant submitted in the reply to the show cause notice before the Adjudicatory Authority, the relevant paragraph reads:-

"5. Noticee submits that he has been working in Dubai for the last 18 years and has come back to India and gone to Dubai on a number of occasions but has never been found indulging in any offence of any sort. In the present case also he has become a victim of circumstances for having believed Shri Vinod Kumar Saini." 12. In view of the above, we do not find any merit in the present application and the same is dismissed.