

(1997) 01 MAD CK 0088

In the Madras High Court

Case No : R.C. No. 6/97, (Answering reference points under Section 130 of Customs Act, 1962)

Rekhi Road Liners (P) Ltd.

APPELLANT

Vs

Collector of Customs, Madras

RESPONDENT

Date of Decision : 28-01-1997

Acts Referred:

Customs Act, 1962 — Section 111, 112, 130, 130(1), 130(3)

Citation : (1999) 113 ELT 413

Hon'ble Judges : S.M. Abdul Wahab, J;Raju, J

Bench : Division Bench

Advocate : Shri Ismail, for the Appellant; Shri S. Veeraraghavan, Addl. Central Govt. Standing Counsel, for the Respondent

Judgement

Raju, J.—The above reference has been made u/s 130(1) of the Customs Act, 1962 at the instance of the applicant for adjudication and determination of the following questions of law :

1. Whether the appellate Tribunal is not bound by the finding arrived at by the Chief Metropolitan Magistrate after a full-fledged trial and on the basis of the entire evidence in the case to the effect that it has not been proved beyond reasonable doubt that the watches and straps transported by the appellants (accused in the criminal cases) were smuggled goods and by the order of acquittal passed by that Court.

2. Whether it is legally open to the Appellate Tribunal to come to the conclusion that the goods were of foreign origin liable to be confiscated u/s 111 of the Act, on the same facts, evidence and circumstances and find the applicants guilty u/s 112 of the Act, holding that the criminal court has not considered or legally evaluated the evidence and given a finding with reference to the foreign origin of the watches especially when the judgment of the Magistrate had become final, not having been appealed against ?

3. Whether it was in order for the Tribunal to hold that the watches were liable to confiscation u/s 111(d) of the Act and impose penalty u/s 112 of the Act when the Department on its part had failed to discharge the onus of proof that the goods were of foreign origin or smuggled into India ?

2. The appellant was engaged to transport goods from Bangalore to Madras and in the course of transit on 29-12-1972, the Assistant Commercial Tax Officer on duty at Poonamallee Check Post stopped a lorry bearing Registration No. MYD 4124 and in the course of examining the consignments in the lorry entertained suspicion about the contents of one pocket with a label "stationery articles" and after due notice to the Madras Branch Office of the appellant company and in the presence of the Manager of the appellant Company's Madras Branch Office, the consignment in question was opened and it was found to contain instead of stationery articles, 210 watches such as, Henry Sandoz, Fortis, Citizen, etc. besides 90 foreign straps. The Sales Tax involved is Rs. 6376.45 which was paid along with compounding fee of Rs. 1,000/- for the release of the lorry and they got the release of the watches. In the first week of March, 1972 the Superintendent of Customs, on gathering the said information from the Commercial Tax Officer commenced investigation by examining one Kumarasamy and Vijayan who are respectively the Branch Manager and Assistant of the appellant Company. The office of the appellant company at Madras was also searched by the Superintendent of Customs on 19-9-1972 and the records were also scrutinised. The two persons, Kumarasamy and Vijayan were again examined. After completion of the investigation, show cause notices were issued to the applicants resulting in the passing of an order of penalty u/s 112 of the Customs Act against the appellant company and its Director Thiru Rekhi, besides its Madras Branch Manager and its Assistant by the Adjudicating Authority which was latter confirmed by the Central Board of Central Excise and Customs.

3. Apart from this, a prosecution was also instituted by the Assistant Collector of Customs against the applicants u/s 135(1)(b)(iii) of the Customs Act before the Chief Metropolitan Magistrate, Egmore, Madras in G.C. No. 16802/74 wherein the accused/appellants were acquitted on the ground of benefit of doubt. The applicants thereafter, filed a revision application to the Government of India u/s 131 of the Customs Act, 1962 as it stood prior to the amendment in the year 1982 which was thereafter, transferred to the Customs, Excise, Gold (Control) Tribunal (South Region) at Madras u/s 131(B) of the Act for disposal as if an appeal to the Tribunal. After giving an hearing to the applicants, the appellants before the Tribunal, the Tribunal by its order dated 21-1-1984 confirmed the orders of the authorities below and rejected the appeal. Thereupon, the request made to the Tribunal for reference also came to be rejected on 7-7-1984 1985 (21) E.L.T. 137 (T). Thereafter, the applicant moved this Court and on the directions of this Court u/s 130(3) of the Act, the reference in question came to be made of the three issues noticed supra.

4. Learned Counsel for the applicants vehemently contended that the order of

the Tribunal is vitiated for the reason that the Tribunal could not afford to ignore or by-pass an adjudication by a competent criminal court and consequent the verdict of acquittal recorded by the criminal court, the order of the Adjudicating Authority imposing penalty ought to have been set aside. It was also contended that in the teeth of the categorical finding of acquittal recorded by the competent criminal court, the authorities functioning under the Act cannot come to a different conclusion on the same facts, evidence and circumstances and hold them guilty of an offence u/s 112 of the Act. Learned Counsel also contended that the Department having failed to prove its case before the criminal court cannot make it up by deciding the issue departmentally in their favour.

5. The learned Additional Central Government Standing Counsel reiterated the stand of the Department before the authorities below by adopting those reasoning.

6. We have carefully considered the submissions of learned Counsel for the applicant and of the respondent. We have been taken through the orders of the Adjudicating Authority and that of the Board as also the Tribunal passed on the proceedings transferred to its file from that of the Government which was instituted by the applicant in the form of revision under the provisions as it then stood. The Tribunal has dealt with the very issues extensively in the light of the series of decisions on the very subject and came to the conclusion, rightly in our view, that the acquittal or the failure of the prosecution to prove the charge before the criminal court is no impediment for initiating or adjudicating the claim under the Act departmentally. We are of the view and it is by now well settled also that the proceedings by way of initiation of criminal prosecution under the criminal law in the light of Section 135 of the Customs Act and the departmental proceedings pertaining to adjudication u/s 112 of the Customs Act are parallel proceedings and mere acquittal by the criminal Court will not bind the authorities under the statute from proceeding u/s 112(b) of the Customs Act and passing appropriate orders on merits in accordance with law. The mere fact that the criminal court did not find sufficient evidence to convict the offender or that in the view of the criminal court, the charge has not been proved beyond reasonable doubt or that the accused before the criminal court came to be acquitted by extending to him the benefit of doubt is no ground to disentitle the authorities functioning under the Act to embark upon adjudication proceedings. The stand and of proof required as also the nature of evidence and the character of materials that could be relied upon vastly differs in respect of the proceedings between those distinct and different forums.

7. Consequently, we do not find any error whatsoever in the order of the Tribunal repelling the challenge made to the adjudication proceedings on the basis of the acquittal by the criminal Court and that on giving benefit of doubt. Consequently, we answer the questions referred to us in the following manner. The first question has to be answered by holding that the acquittal of the applicants by the criminal court of the charge in the proceedings instituted u/s 135 of the Act

does not bar or take away the rights of the competing authority to proceed in the matter against the applicants for violation, rendering them liable for action u/s 112 of the Act. As for the second question, the Adjudication Authorities discharging powers u/s 112 or u/s 111 of the Act are not disabled by the verdict of acquittal recorded in favour of the accused and that too when the same has been by extending benefit of doubt from proceeding in the matter under Sections 111 and 112 of the Act. As for the third question, we are of the view, that since the quantum, nature and character of proof required before the criminal court in a prosecution u/s 135 of the Act being wholly distinct, different and altogether separate from the one required and the manner of consideration in the adjudication proceedings under Sections 111 or 112 of the Act and they substantially and totally differ in character and contents, the Adjudicating Authorities are not disabled from independently adjudicating the matter under Sections 111 and 112 of the Act on the basis of the materials available on record before them. No costs.