(2010) 09 MAD CK 0298

In the Madras High Court

Case No : Writ Petition No. 34102 of 2003

S. Faisal Khan — APPELLANT

Vs

The Joint Commissioner of Customs (Air Port), The Additional Commissioner of Customs (Air Port), The Commissioner of Customs (Appeals) and Union of India (UOI) — RESPONDENT

Date of Decision : 13-09-2010

Acts Referred:

Customs Act, 1962 — Section 108, 113, 125

Citation : (2010) 259 ELT 541

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : S.R. Sundar, for the Appellant; M.S. Govindarajan, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Sivagnanam, J.—The prayer in the Writ Petition is for issuance of a writ of certiorarified mandamus to quash the order passed by the third Respondent dated 19.2.2003 and direct the Respondents to exercise the option of redemption of currency confiscated from the Petitioner on 6.5.2000 and refund the penalty collected.

2. The Petitioner was intercepted by the Customs Authorities at the departure hall of the Chennai Air Port on 6.5.2000 and on examination of his baggage, the authorities recovered Indian and Foreign currency equivalent to Rs. 2,03,358/ -. The Customs Authorities recorded a statement from the Petitioner u/s 108 of the Customs Act, 1962 (herein after referred to as the ''Act'') on 6.5.2000, wherein the Petitioner appears to have stated that the money belonged to one Abdullah and he has to hand it over at Singapore to one Rahman for a monetary consideration. Subsequently, personal hearing was given to the Petitioner on 16.5.2000, wherein he has not spoken to about any other source for the currency carried by him. After hearing the Petitioner, the adjudicating authority

ordered absolute confiscation of the currency u/s 113(d), (e) and (h) of the Act and imposed a personal penalty of Rs. 20,000/ -. Aggrieved by such order, the Petitioner filed an Appeal before the Commissioner (Appeals) and the Commissioner (Appeals) remanded the matter for considering the aspect as to whether the Petitioner is entitled for redemption. On remand the second Respondent re-adjudicated the matter and ordered for absolute confiscation without giving option for redemption. Aggrieved by such order, the Petitioner preferred an appeal to the Commissioner of Appeals and the same was rejected by order dated 3.5.2002. Aggrieved by such order, the Petitioner preferred a Revision before the Central Government and the Revisional Authority by an order dated 3.5.2002, rejected the Revision Petition. Aggrieved by such order, the Petitioner is before this Court by way of the present Writ Petition.

3. The sheet anchor of the argument of the learned Counsel for the Petitioner is that the orders of the authorities ordering absolute confiscation is unsustainable as the authorities ought to have seen that in so far as carrying of Indian currency, there is only restriction on the amount and there is no absolute bar to carry Indian currency. Therefore at least to that extent, the authority should have allowed the redemption. In support of his contentions, the learned Counsel relied on the decision of the Hon''ble Supreme Court in Hargovind Das K. Joshi and Others Vs. Collector of Customs and Others, and certain decisions of the Tribunal.

4. Per contra, the learned Senior Standing Counsel appearing for the Department would submit that the Original authority, Appellate authority and the Revisional authority have concurrently held that the Petitioner is not entitled for redemption and therefore this Court should not re-appreciate the evidence on record and come to a different conclusion. Further, it is submitted that the decision of the authorities cannot be faulted since the Petitioner himself in the statement recorded u/s 108 of the Act has clearly admitted that he was carrying Indian and foreign currency abroad for a consideration and that he was a regular trader and therefore order of absolute confiscation is valid and proper.

5. I have carefully considered the submissions made by the learned Counsels appearing on either side and perused the materials available on record.

6. The only issue which falls for consideration in this Writ Petition is as to whether the authorities were justified in ordering absolute confiscation of the currency seized from the Petitioner without granting relief of redemption.

7. In terms of Section 125 of the Act, whenever confiscation of goods is authorized by the Act, the Officer adjudicating it may, in the case of any goods, the importation or exportation whereof is prohibited under the Act or under any other law and shall, in case of any other goods, give to the owner of the goods an option to pay in lieu of compensation such fine as the said officer thinks fit. Thus, the language of Section 125 of the Act confers discretion on the adjudicating authority. Thus, the adjudicating authority is obliged to address the

question as to whether the discretion should be exercised in favor of the importer/exporter having regard to the facts and circumstances of the case.

8. The Hon''ble Supreme Court in the case of HARGOVIND DAS referred supra, considered the issue where the adjudicating authority therein failed to address the issue as to whether such action of redemption should be granted to the importer of the said consignment and accordingly the Hon''ble Supreme Court in the said case remanded the matter to the Collector of Customs for the limited purpose to examine as to whether or not to give an option to the importer to redeem the confiscated goods on payment of such fine in lieu of confiscation.

9. In the instant case, the Original Authority passed an order on 06.5.2000 ordering absolute confiscation. The Petitioner preferred an appeal to the Commissioner (Appeals) and the Appellate Authority by an order dated 6.11.2000 by placing reliance on the decision of the Hon''ble Supreme Court in HARGOVIND DAS case referred supra, remanded the matter to the adjudicating authority for the limited purpose to consider the question as to whether to grant the option of redemption or not. On remand, the adjudicating authority took up the matter for consideration and after examining the entire factual position did not exercise the discretion in favor of the Petitioner. This order was passed on 21.8.2001 after considering the factual and legal position and the same has been confirmed in appeal as well as in Revision. The orders passed by the Original authority, Appellate authority and the Revisional authority are cogent and supported by reasons. The authorities took note of the voluntary statement recorded u/s 108 of the Act, wherein the Petitioner had categorically admitted that he was taking the currency clandestinely on behalf of one Abdullah for monetary consideration. This particular evidence was held to be acceptable and cannot be brushed aside and there is no record to show that the statement of the Petitioner was recorded under duress/pressure and the same was not voluntary. It is settled legal proposition that statement recorded u/s 108 of the Act is admissible unlike a statement recorded by a Police Officer. Thus, the Appellate authority and the Revisional authority considering the peculiar facts and circumstances of the case, the nature of concealment of currency and the fact that the Petitioner was carrying the currency on behalf someone else for monetary consideration, rejected the request for redemption. Therefore, I find no valid reasons to interfere with the concurrent finding of the three authorities.

10. In the result, the Writ Petition fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.