(2006) 03 DEL CK 0214

In the Delhi High Court

Case No : Writ Petition (C) 18794 of 2005

Sandeep Jain APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 31-03-2006

Acts Referred:

Customs Act, 1962 — Section 108, 110, 112, 135(1), 142
Penal Code, 1860 (IPC) — Section 172, 174, 175

Citation : (2006) 03 DEL CK 0214

Hon'ble Judges : T.S. Thakur, J;J.M. Malik, J

Bench : Division Bench

Advocate : Ashutosh, for the Appellant; Suresh Kait, for the Respondent

Final Decision : Dismissed

Judgement

J.M. Malik, J.—The facts set out in the writ petition are these. Following a tip off the Custom Preventive Unit, recovered. 31 pieces of foreign marked gold biscuits of ten tolas each valued at Rs. 16,30,184/- and having a purity of 9990 as embossed on the gold biscuits from the possession of premises of M/s Kuldeep Dyes Cutters and Jewellers, 3728, Gali Bara Tooti, Sadar Bazar, Delhi in presence of its proprietor Kishan Gopal Verma. Kishan Gopal could not produce any documentary evidence for its lawful possession. The above said contraband was seized u/s 110 of the Customs Act. Kishan Gopal Verma was quizzed. In his statement u/s 108 of the Customs Act, he admitted the recovery and seizure of the above said gold biscuits and disclosed that those had been purchased by him from M/s Kishan Grover, Prem Jewellers, M/s Babu Ram, Om Parkash and M/s Pooran Mal through brokers namely Subhash and Suresh and documents in support of these were lying with his Chartered Accountant Shri Subhash. However, it transpired that the statement made by him was false. Thereafter, he changed his stance and subsequently disclosed that he was not aware of the antecedents of Subhash and Suresh. He was taken into judicial custody.

2. In his bail application moved before the learned Additional Sessions Judge, he

blurted out that he had procured the gold from M/s True Gold, Nai Sarak, Delhi. The present petitioner is its proprietor. In order to buttress his defense he produced two vouchers purporting to have been issued by M/s True Gold. However, the Customs Department replied that Kishan Gopal was constantly changing his stand and has attempted to float another theory which is utterly bogus and an afterthought. Subsequently, a complaint was filed against Kishan Gopal Verma for the offence u/s 135(1)(b) of the Customs Act, 1962 in the court of learned A.C.M.M., New Delhi. The statement of the present petitioner was recorded u/s 108 of the Customs Act, wherein he disclosed that, although, he is a proprietor of M/s True Gold, Jogiwara, Nai Sarak, yet, its transactions are mainly looked after by his brother-in-law Sunil Kumar Jain. He further explained that the impugned bills for the sale in question were issued by his Muneem Narender Pal Chopra at the behest of said Sunil Kumar Jain. He denied having any acquaintance with the above said Kishan Gopal Verma. Statement of Narender Pal Chopra u/s 108 of the Customs Act was recorded. He disclosed that the petitioner mostly concentrates in his saree shop M/s Jai Santoshi Textiles. He also contradicted the statement of petitioner''s brother-in-law, Sunil Kumar Jain allegedly recorded u/s 108 of the Act in which he denied about any instructions having been given to the Muneem for issuance of the impugned bills. It is averred that Muneem and the petitioner also informed the Department that Sunil Kumar Jain is well versed in gold business and used to visit Sandeep Jain in his saree business. Consequently, notice was issued to Kishan Gopal Verma as well as the petitioner wherein they were called upon as to why gold in question should not be confiscated and penalty should not be imposed upon them. In response to the said notice, the petitioner denied these allegations. The petitioner also prayed that he wanted to cross-examine Kishan Gopal Verma, Narender Pal Chopra and Investigating Officer at the time of personal hearing in the matter. Personal hearing was granted to the petitioner and petitioner was directed to pay penalty in the sum of Rs. 2,50,000/- u/s 112(a) and 112(b) of the Custom Act.

3. Aggrieved by that order the petitioner preferred an appeal before the Tribunal in which he was directed to make pre-deposit of Rs. 75,000/- before 1st August, 2002. The petitioner could not comply with that order and his appeal was dismissed on 7th August, 2002. Out of blue, the petitioner received a letter of hearing on 27th January, 2005, wherein he was informed that the matter was fixed for personal hearing before the learned Adjudicating Authority on 15th February, 2005 because the matter was remanded for de novo proceedings in the appeal of said co noticee Kishan Gopal Verma. The petitioner filed a reply dated 15th February, 2005. His counsel was heard on 24th March, 2005. However, the petitioner received the following order, dated 27th April, 2005, wherein, it was held that the order passed by the CESTAT dated 7.8.2002 had attained finality and penalty in the sum of Rs. 2,50,000/- was imposed upon Sandeep Jain u/s 112(a) and 112(b) of the Customs Act. He was required to deposit the said amount within a month u/s 142 of the Customs Act. The petitioner preferred an

appeal. When the matter came up on 23rd August, 2005, learned Tribunal was of the view that the appeal was not maintainable as the same had already been dismissed. The appeal was filed by the wife of Kishan Gopal Verma after his death. Since Kishan Gopal Verma had expired, Therefore, no penalty was imposed upon him. Under the circumstances, the petitioner withdrew the appeal vide order dated 29th August, 2005 in order to file the present writ petition.

4. It is averred that order of remand qua the co noticee Kishan Gopal Verma was passed by different Bench of the Tribunal though by a common adjudicating order where both of them were penalised. Since the matter of both the co noticees and the petitioner were interconnected, Therefore, under these circumstances, once the matter of co noticee was remanded back, it was in the fitness of things that even the petitioner''s case ought to have been heard fresh and fresh adjudicating order have been passed even with regard to him. Under the circumstances, the present writ petition dated 24th September, 2005 was filed with the prayer that a writ of certiorari and or any other appropriate writ or order or direction in the nature thereof may be passed for quashing the order dated 7th August, 2002 passed by the respondent No. 1 and further directions be issued to the Tribunal to hear the matter on merits without pre-deposit of penalty.

5. The order dated 14.3.2002 passed by the Commissioner of Customs goes to reveal the following facts. In his statement u/s 108 of the Customs Act, Narender Pal Chopra made this statement. Sandeep Jain, owner of the premises was not available. He was the care taker of Sandeep Jain''s firms, True Gold and M/s Satish Textiles located at 5768, Jogiwara, Nai Sarak, Delhi. He admitted that a bill book bearing Seriall No. 01 to 50 was available in the premises, out of which bills No. 01 to 35, last bill dated 29.8.2000 had been issued by him. He admitted that four bills bearing No. 32-35 in the name of M/s Kuldeep Dye Cutters and Jewellers had been issued by him on the verbal instructions of owner Sandeep Jain in the first week of September, 2000 and that the name of the firm and other particulars had been filled up by him from a paper slip that was produced by Sh. Sandeep Jain. He further disclosed that first two bills bearing No. 32 dated 26.8.2000 and No. 33 dated 26.8.2000 for 16 pieces and 15 pieces respectively of standard gold bars of ten tolas each and having purity of 24 cts. were also issued in the month of September, 2000 but were cancelled since Sandeep Jain had told him that the buyer was submitting ST-1 form. The bills bearing No. 34 dated 28.8.2000 and No. 35 dated 29.8.2000 for 14 and 17 pieces, respectively, of standard gold bars of ten tolas each, had been issued against form ST-1 on the advise of Sandeep Jain. Narender Pal Chopra stated that he used to issue the bills at the instructions of his employer Sandeep Jain.

6. Thereafter, Sandeep Jain was summoned repeatedly by the Customs Department but he had been evading appearance on the one pretext or the other. The prosecution case against Sh. Sandeep Jain was lodged in the court of learned ACMM under Sections 172/174/175 of the IPC read with Section 108 of the Customs Act, 1962 for non compliance of the summons issued by the

Superintendent, Preventive. Sh. Sandeep Jain pleaded guilty and also paid the fine thereon. In a statement recorded u/s 108 of the Customs Act dated 6.6.2001, Sandeep Jain alleged that all the bills were issued by his Muneem Narender Pal Chopra. He denied any knowledge about those bills. He contended that bills were issued by Sunil Jain, his brother-in-law and Narender Pal Chopra but could not clarify, which bill was issued by Sunil Jain and which bill was issued by Narender Pal Chopra. On 12.06.2001, Sandeep Jain was confronted with the application of Kishan Gopal dated 4.6.2001 including copies of bills Nos. 34, 35 along with an affidavit and an application dated 25.1.2001 sworn by Sandeep Jain before the SDM, Pahar Ganj, New Delhi, wherein Sandeep Jain confirmed the sale of 14 and 17 pieces of gold bars of ten tolas each vide bill No. 34 and 35 dated 22 & 29.8.2000 respectively to M/s. Kuldeep Dye, Cutters and Jewellers. Sandeep Jain confirmed that the bill Nos. 34 and 35 had been issued by his firm and the signatures on them are also his. He further stated that the affidavit was got signed from him by his brother-in-law Sunil Jain, who also took it before SDM, Pahar Ganj, New Delhi for attestation but in the same breath he stated that he or his firm had not sold any gold to Kishan Gopal Verma and he stated that he did not know from where Kishan Gopal had obtained the affidavit. Sandeep Jain did not produce the records pertaining to sale tax for the year 2000-01. He admitted that he evaded to appear before the customs authorities because he was apprehending his arrest.

7. On the other hand, Sunil Jain stated that despite his acquaintance with the Muneem, he never interfered or gave him any instructions for anything and that he had no knowledge about the above bills either. Sunil Jain also stated that he had never seen the original copy of the affidavit in question and also denied having taken the affidavit for attestation to the SDM. Sunil Jain also denied having known the customers shown in the bill book and denied having issued the same at any time.

8. The argument urged by the learned Counsel for the petitioner has the following three prongs. The key argument advanced by him was that the orders passed by the above said authorities are erroneous and invalid. Secondly, the petitioner was subjected to harassment and torture by the officers of Customs Department. Lastly he submitted that accused is a poor man, who, could not afford to make the pre-deposit.

9. The arguments urged by the learned Counsel for the petitioner are lame of strength. For the following reasons, we are of the considered view that the present writ petition is not maintainable. There is an inordinate delay in filing the present writ petition. The petitioner was under the illusion that every delay was so much more grist to his mill. When he found that sword of democles had started hanging over his head, he has come up with this writ at a very belated stage i.e. after the lapse of three years. It may be recalled that the petitioner was directed to make the pre-deposit vide order dated 31.05.2002 and the present writ petition was filed on 26th September, 2005. According to Lord

Plunket, time holds in one hand scythe and in the other an hour glass; scythe mows down the evidence of our rights, the hour glass measures the period which renders that evidence superfluous. The petitioner does not deserve the relief due to laches and delay.

10. Now we turn to the merits of this case. The petitioner failed to scrub the allegations against him. He indulged in hubble bubble and did not clarify the position. He took a puerile plea that he did not have any connection with the above said contraband goods but same were dealt with by Sunil Jain, his brother-in-law and Narender Pal Chopra, his Muneem. He was the proprietor of the firm and amenable for all its wrongs. His Explanation is a crass misrepresentation of facts. His statement is a mish-mash of bewildering contradictions and inconsistencies. The statements made by his brother in law and Muneem are ajar with the facts disclosed by Sandeep Jain. He has attempted to evade the truth by a quibble. We are unable to clap any importance with his plea.

11. It appears that the petitioner and Kishan Gopal Verma were working in league. The admission that petitioner himself signed the bills/vouchers as well as the affidavit comes out from the horse''s mouth itself. The odd conduct of the petitioner in not appearing before the Customs authorities for a period of more than 9 months and paying the fine before the ACMM in a prosecution under Sections 172/174/175 of the I.P.C. read with Section 108 of the Customs Act is not understandable. He had enough time to ventilate his grievance before the Customs authorities but he did not make avail of the same. The condition imposed by the Tribunal to pay Rs. 75,000/- for admission of his appeal cannot be said to be unjust. Even then he chose to bury his head in the sand and took no action.

12. We are of the considered view that the petitioner does not have a crow to pluck with someone. The writ is meritless and is dismissed in liming.