

(2014) 04 BOM CK 0050
In the Bombay High Court
Case No : Customs Appeal No. 64 of 2010

Shaikh Mohammed Azam

APPELLANT

Vs

Commissioner of Customs

RESPONDENT

Date of Decision : 04-04-2014

Acts Referred:

Citation : (2014) 306 ELT 375

Hon'ble Judges : S.C. Dharmadhikari, J;G.S. Kulkarni, J

Bench : Division Bench

Advocate : V.M. Advani with R.R. Shah i/b Advani, Sachwani and Heera, Advocate for the Appellant; A.S. Rao with S.D. Bhosale, Advocate for the Respondent

Judgement

1. We have learned counsel appearing for the assessee. With his assistance, we have perused the order passed by the Tribunal reducing the penalty to Rs. 10 lakhs 12006 (205) E.L.T. 1192 (Tri.-Mum.)). In the submission of the learned counsel, the case was of complete exoneration and on par with the co-noticee. The Appeal raises substantial question of law because the imposition of penalty is based on the confessional statement of Paowala which he retracted later. There was no independent corroboration to the statement of Paowala and therefore, the Tribunal was in error in upholding the order of penalty. The Appeal therefore deserves admission as it raises substantial question of law.

2. It is submitted that the Appeal raises a substantial question of law because a specific request was made in reply to the show cause notice to permit cross-examination of the co-noticees. This is denied. The Authority violated the principles of natural justice. In other words, the principles of natural justice have been violated because this request is rejected.

3. We have perused the order passed by the Tribunal carefully and equally the principle in the decision relied upon in the case of Basudev Garg Vs. Commissioner of Customs, There, the issue was with regard to a report and which was relied upon. That was pertaining to the ball bearings of Chinese origin

which were imported but passed off as an import from Sri Lanka. That is to evade anti-dumping duty. The show cause notice was issued and it contains references to several individuals. The Delhi High Court has reproduced the allegations in the show cause notice and the names of the persons whose statements were recorded. 25 statements were relied upon and equally some report. The Delhi High Court found that the peculiar case and facts brought before it, required an opportunity to be given to the appellant before it of cross-examining the persons whose statements have been relied upon. That was because of a clear case of prejudice established. We do not find any such situation before us. In the present case, a ground engineer working in the Air India was accused of smuggling of goods namely, diamonds out of India. The case proceeded on the footing that the Directorate of Revenue Intelligence, Regional Unit, Hyderabad intercepted one Mohammed Suleman Paowala at the Hyderabad Airport when he was about to board Indian Airlines Flight IC 591 which was bound for Sharjah. One tool which was hidden in the socks on the left leg of Paowala was seized. This tool was from the toolkit of the Aircraft Maintenance Department of the Indian Airlines. The tool therein was meant for opening and closing of the aircraft panel. That was stated to be handed by co-passenger, Shaikh Mohammed who is the appellant before us. Paowala and the appellant arrived at Mumbai by a flight from Hyderabad. That flight from Hyderabad to Mumbai was operated as IC 117 but using the same aircraft. That is how Paowala narrated the entire case in his version. This is how the name of the appellant surfaced and that the seizure was affected of the diamonds as well. The diamonds were valued at approximately Rs. 5.24 crores. The department therefore relied not only on the statement of Paowala which is stated to be retracted but other materials in the form of identification carried out by a travel agent. The place was also identified and the recovery was at the instance of the present appellant. It is in these circumstances, that the Tribunal found that there is no prejudice caused to the appellant. We also do not find any prejudice being caused because of the alleged retraction of the statement by Paowala. Once there is other material which implicates the appellant then, this is not a matter which raises any substantial question of law. The statement of the appellant was recorded on 10th April, 1996. The appellant admitted that he accompanied Mr. Paowala to try and confirm his waitlisted tickets to Sharjah. The appellant confirmed that he was on duty on 14th March, 1996 and that he left early to go to the travel agent to collect Paowala's travel documents. In his further statement dated 17th April, 1996, the appellant stated that he met one Salimbhai, a friend of Paowala at the entrance of airport on 14th March, 1996. That Salimbhai handed over two packets stated to contain Ayurvedic medicines for being handed to Paowala. Those were handed to Paowala who was seated a couple of rows behind. There is statement of another person i.e. Mohd. Zakir Dawood. In such circumstances, we are of the opinion that in the absence of any prejudice caused, the appellant cannot make a grievance that the principles of natural justice have been violated. This is not a case of the appellant being proceeded only on the alleged retracted confession of Paowala. Once there was

independent material to support the charge, then, this is not a fit case for interference in our appellate jurisdiction. The Appeal does not raise any substantial question of law. It is accordingly dismissed. No costs.