(2010) 01 PAT CK 0044

In the Patna High Court

Union of India (UOI) and Others APPELLANT

Vs

Jagdish Chandra Verma RESPONDENT

Date of Decision : 28-01-2010

Acts Referred:

Customs Act, 1962 — Section 107, 108, 112, 12, 121

Citation : (2010) 01 PAT CK 0044

Hon'ble Judges : Sudhir Kumar Katriar, J;Kishore Kumar Mandal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.K. Katriar and K.K. Mandal, JJ.—This is an application u/s 130A of the Customs Act,1962, and is directed against the order dated 20.11.2002, passed by the Customs, Excise & Gold (Control) Appellate Tribunal, East Zonal Bench, Kolkata, in Appeal No. 306/2002, whereby the appeal preferred by the respondent herein has been allowed, and the order of the first appellate authority u/s 121, read with Section 112(b) of the Customs Act (hereinafter to be referred to as the ''Act''), has been set aside.

2. A brief statement of facts essential for disposal of this application may be indicated. On 15.10.1997, at 06.00 hrs., the Custom Authorities had intercepted one Lalan Prasad Gupta while he was travelling by a bus bearing registration No. BR-06P-385, from Patna to Bhittamore, and was brought to the Customs office. He was found in possession of a sum of Rs. 1, 68,200/-, wrapped in two bundles and preserved in his bag. Simultaneously, one small piece of paper with scribbling ''1681/78'' and ''374.00'' on the upper right corner of the paper, and ''s2/45'' was written just below ''374.00''. One cloth tape was also recovered from his possession. On being questioned, he disclosed that the same is the sale proceeds of two pieces of foreign gold biscuit weighing 374 gms., which had been given to him by one Balram Prasad Gupta of Janakpurdham (Nepal), for sale to Jagdish Chandra Verma of Banglagarh, Darbhanga (Bihar), the respondent herein. Lalan Prasad Gupta was proceeded against u/s 121 read with Section

112(b) of the Act. This led to search of the premises of Jagdish Chandra Verma where nothing incriminating was found. The aforesaid Lalan Prasad Gupta, however, abandoned the proceeding, never appeared, and the cash amount of Rs. 1, 68,200/-was confiscated.

3. In view of the statements of Lalan Prasad Gupta, the present respondent, Jagdish Chandra Verma, was also proceeded against and found guilty in terms of Section 121 read with Section 112(b) of the Act. A show-cause notice was issued to him who gave a reply denying the allegations. The learned Joint Commissioner (Customs) found the respondent herein guilty in terms of Section 121 read with Section 12(b) of the Act and imposed a cash penalty of Rs. 20,000/-. The respondent challenged the same by preferring an appeal which was dismissed by order dated 17.7.2002, passed by the learned Commissioner (Appeals), Customs & Central Excise, Patna. The respondent herein preferred appeal before the Tribunal which has been allowed by the impugned order and that of the learned Commissioner has been set aside. Hence this application at the instance of the Department of Customs.

4. We have perused the materials on record and considered the submissions of learned Counsel for the parties. It appears to us that the primary material against the respondent is the statement of Lalan Prasad Gupta. There is no material on record to suggest that the respondent was afforded an opportunity to cross-examine Lalan Prasad Gupta. In such an event, the statement of Lalan Prasad Gupta ceases to be substantive evidence in so far as the respondent is concerned. A statement becomes evidence only after it is subjected to cross-examination at the hands of the person likely to be adversely affected by the same. There is no material on record to suggest that the respondent was permitted to cross-examine Lalan Prasad Gupta. In that view of the matter, the statement made by Lalan Prasad Gupta in terms of Section 108 of the Customs Act 1962, cannot be used against the respondent.

5. We must consider another aspect of the matter. Show-cause notice was issued to the respondent wherein he denied the charges. The same has been summarized by the learned Commissioner in his order, and is reproduced herein below:

In reply to the said Show Cause Notice, Shri J. Dogra, Advocate on behalf of Shri Jagdish Chandra Verma submitted that the charges against Shri J.C. Verma be dropped on the following grounds:

(i) That the Show Cause Notice issued against the petitioner was unwarranted because nothing was recovered from the possession of the petitioner nor the petitioner was concerned in any manner with the recovered Indian currency.

(ii) That statement made by an accused against another accused was not legally admissible.

(iii) That neither any contraband article nor any paper had been recovered from the petitioner''s premises during the search conducted by the Customs authorities.

(iv) That there was nothing on record except the statement of Lalan Prasad Gupta to show that the petitioner was in any manner connected with the act of smuggling or with the recovered Indian currency.

(v) That the statement recorded u/s 107 and 108 of the Customs Act, 1962 was not admissible unless it was recorded by a duly empowered officer.

(vi) That simply on the basis of the statement of Lalan Prasad Gupta, no penalty could be imposed on the petitioner u/s 112 of the Customs Act.

(vii) That the petitioner was quan innocent and in no manner he could be associated with Lalan Prasad Gupta.

No part of the cause shown by the respondent implicates him. It is entirely a self exculpatory statement and there is no material therein to implicate the respondent. This also does not advance the department''s case. We, therefore, do not find any material in law which implicates the respondent.

6. In the result, this application is dismissed. In the facts and circumstances of thefcase, there shall be no order as to costs.