

Rekhi Roadlines Pvt. Ltd. and anr. Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jul-07-1984

Reported in : (1985)LC622Tri(Chennai)

Appellant : Rekhi Roadlines Pvt. Ltd. and anr.

Respondent : Collector of Customs

Judgement :

1. This is an application for reference under Section 130(1) of the Customs Act, 1962 on certain points said to be questions of law arising out of the order of the Tribunal dated 21-1-1984 in Appeal No.CD(T)(MAS) 122/80. A short resume of the relevant facts may be necessary before deciding the questions of law canvassed by the learned counsel for the appellant.

2. On 29-2-1972, the Asstt. Commercial Tax Officer checked a lorry bearing registration number MYD 4124 engaged by the applicant, Rekhi Roadlines Private Limited to transport their goods from Bangalore to Madras and recovered 210 wrist watches bearing foreign names such as Henry Sandos, Fortis, Citizen, etc. etc., kept in a packet labelled "stationery articles". The consignment in question was transported from the applicant's head office at Bangalore to their branch office at Madras under 'self free of charge with a false package label "stationery articles". The Branch Manager of the applicant's company who cleared the consignment on behalf of the applicant's company and his Assistant Vijayan, when examined by the authorities admitted that the watches were of foreign origin and were meant for sale.

Adjudication proceedings initiated against the applicants resulted in imposition of penalties under Section 112 on the applicants which was confirmed by the Tribunal under its order referred to supra. A prosecution was also instituted by the Assistant Collector of Customs against the applicants under Section 135(l)(b)(ii) of the Customs Act, 1962 before the Chief Metropolitan Magistrate, Madras in G.C. No. 16802 of 1974 wherein the accused-applicants were acquitted on the ground of 'benefit of doubt'.

3. The learned counsel, Shri Nambiar, appearing for the applicants submitted that inasmuch the acquittal of the applicants by the Criminal Court is on merits, the same is binding on a statutory Tribunal and this is a question of law which has to be referred to the High Court.

In support of the above submission, the learned counsel relied upon the following rulings : 1. AIR 1952 Madras 853-D.B. (Jerone D' Silva v. Regional Transport Authority, South Kanara and another).D.B. (Channappa v. Mysore Revenue Appellate Tribunal 4. The learned Departmental Representative submitted that no question of

law arises out of the order of the Tribunal meriting a reference to the High Court. The learned Departmental Representative further urged that the Tribunal has placed considerable reliance on the statements of the applicant's employees and has clearly found that the Criminal Court has not at all considered, much less legally evaluated the evidentiary value of the various statements of the applicant's employees M/s.

Kumaraswamy and Vijayan. It was submitted by the learned Departmental Representative that the Tribunal, in the light of the ratio of the Supreme Court in the case of *State of Maharashtra v. Natwarlal Damodardas Soni*, reported in AIR 1980 S.C. 593, has applied the principles embedded under Sections 106 and 114 of the Evidence Act against the applicants in the context of the materials on record and the Criminal Court has never adverted to this aspect at all. Finally, it was urged that the Criminal Court has also found as under : "I have therefore, no hesitation in holding that it is the accused 1 and 2 who have despatched this consignment under consignment note No. 11248 with the wrist watches and straps from Bangalore to their Branch Office at Madras." and the acquittal is itself by giving the benefit of doubt to the accused in respect of the charge under Section 135(l)(b)(ii) of the Customs Act, 1962.

5. The rulings cited by the learned counsel for the applicants have been considered in the order of the Tribunal in paras 13 and 14 and have been clearly distinguished on facts. Apart from it, the order of the Tribunal has taken into consideration quite a number of materials which have not been considered or adverted to at all by the Criminal Court. Therefore, this is not a case where the Criminal Court and the Tribunal have acted on an identical evidence and reached conflicting decisions. As is clear from the record, many important pieces of evidence and circumstances which have been taken into consideration by the adjudicating authority and the Tribunal have not been even adverted to, much less considered by the Criminal Court. In these circumstances, the plea of the applicants that the finding of acquittal by the Criminal Court would ipso facto set at naught the imposition of penalty by the adjudicating authority is not legally tenable.

6. The learned counsel for the applicants finally pressed into service the ruling in *George Verghese v. Food Corporation of India*, reported in 1984(1) M.L.J. 49. The facts in that case are different and clearly distinguishable. That was a case arising under writ proceedings where the writ petitioner who was an employee of the Food Corporation of India was originally convicted of certain offence in the Criminal Court and based on that conviction, he was called upon to show cause as to why he should not be dismissed and pursuant to proceedings initiated under Regulation 58 of Section 5 of the Food Corporation of India (Staff) Regulations, 1971, he was dismissed from service. But, ultimately the conviction was set aside by the High Court resulting in the writ petitioner being restored back to service. It is thereafter the old charges were resurrected and the writ petitioner was proceeded against departmentally. It is in this context the High Court held that action initiated on the basis of conviction by a Criminal Court cannot be continued after a verdict of acquittal was rendered by an appellate Court. The facts of the present case are totally different. After completion of adjudication proceedings, the Department resorted to criminal prosecution feeling that the facts and circumstances of the case warranted not merely an adjudication proceedings but also a criminal prosecution as well under law. Even in the criminal prosecution the evidence on the basis of which the accused was given the benefit of doubt and acquitted is not the only evidence before the adjudicating authority but much more, as stated earlier.

7. Though not cited by either of the parties, we may advert in this context to a ruling of the Supreme Court in the case of Corporation of the City of Nagpur, Civil Lines, Nagpur and another Ramachandra and Ors., reported in (1981) 2 Supreme Court cases 714 wherein the Supreme Court has observed : "Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental enquiry on the very same charges or grounds or evidence, but the fact remains however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental enquiry is not taken away nor is its direction any way fettered." Indeed in the above Supreme Court case, notwithstanding the acquittal of the accused in the Criminal Court, the Supreme Court held that continuation of the departmental enquiry is clearly permissible under law. As has been rightly observed in a number of judicial pronouncements, the *raison d'etre* of the whole issue is that departmental proceedings cannot be continued on the same identical evidence and for the same charge on which a Criminal Court has, on merits, rendered a verdict of acquittal.

8. The Tribunal, in its order has adverted to a Division Bench ruling of the Madras High Court in Criminal Revision Case No. 206 of 1976, Criminal Revision Petition No. 204 of 1976 in Assistant Collector of Customs, Preventive Department, Custom House, Madras v. Misrimal and Shah Monmal Misrimal and has taken the view that an order of acquittal would not render negatory or inoperative a valid order of confiscation by a competent adjudicating authority. It would look incongruous if an order of confiscation would remain intact notwithstanding an order of acquittal by a Criminal Court but personal penalty alone would get automatically set aside. Such a proposition of law, in our opinion, is clearly mis-conceived. At any rate, no questions touching the same at all arise under the order of the Tribunal meriting a reference to the High Court.

9. We, therefore, find that no question of law arises out of the order of the Tribunal for reference under Section 130(1) of the Act.

Accordingly, we dismiss the application.

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