IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.2.2016

CORAM

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

R.C.No.5 of 2000

1. T.R.Nanniar (Deceased)
2. Sheshammal
3. Lakshmi
4. Vasanthi
5. Indhira
6. Vanaja
7. Uma
(Petitioners 2 to 7 have been brought on record as LRs of the deceased sole petitioner as per order dated 3.7.2001 in RCMP No.6/2001) ... Petitioners/ Appellants

Versus

Commissioner of Customs,
Tiruchirapalli. ... Respondent

Prayer: Reference case filed against the Ref.order No.234/98 dated 17.12.98 passed by the CEGAT, Chennai against the Final Order No.2865/97 dated 5.11.1997 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, South Zonal Bench, Chennai.

against the order of the Collector of Customs CEX (Appeals) Trichy dated 23.12.93 and made in A.No.C243/94/93 and against the order of the Deputy Collector Customs and Excise Trichy dated 4.8.93 and made in C.No.VIII/10/82/92 -CUS-ADJ.

For petitioner : Mr.B.Satish Sundar
For Respondent : Mr.V.Sundareswaran

ORDER

(Order of the court was made by V.RAMASUBRAMANIAN, J.)

By an order dated 17.12.1998, the Customs, Excise and Gold (Control) Appellate Tribunal, South Zonal Bench, Chennai has referred the following two questions of law for our consideration under section 130 of the Customs Act, 1932:-

"1) Whether the Tribunal erred in relying upon the statement of one Sundaram when the said statement was not made available to the appellants either through the show cause notice or during the proceedings before the learned Collector (Appeals)?

2) Whether the decision of the Tribunal that because no cross-examination was asked for, therefore, the non-supply of the said statement of Sundaram to the appellants during the course of proceedings before the learned Collector (Appeals) does not violate the principles of natural justice is correct in law?"

2. Heard Mr.B.Satish Sundar, learned counsel for the applicants/assessees and Mr.V.Sundareswaran, learned Senior Panel Counsel for the respondent.

3. The officers attached to the Customs Preventive Unit conducted a search on 16.6.1992 in the business premises of the assessee by name T.R.Nanniar (who is now no more) and seized 6 silver ingots weighing 19.165 kilograms, on a reasonable believe that the same was smuggled. A statement was recorded from T.R.Nanniar on 16.6.1992 under section 108 of the Customs Act, 1962.

4. Subsequently, Nanniar retracted his statement on 19.6.1992. In the meantime, the silver bars were assayed and found to be of purity ranging from 99.42 to 99.51.

5. A show cause notice was issued on 10.12.1992 proposing confiscation and imposition of penalty. After a reply was sent, an order in original dated 4.8.1993 was passed confiscating the silver bars and imposing a penalty. The said order was confirmed by the Commissioner (Appeals) on 23.12.1993.

6. However, on an appeal made by the party, the Customs, Excise and Gold (Control) Appellate Tribunal passed an order dated 4.11.1997, modifying the order of confiscation and allowing redemption of the silver bars upon payment of fine of Rs.60,000/-. Penalty was also sustained. While doing so, the Tribunal referred the aforesaid two questions for our consideration, under section 130.

7. Before proceeding further with the questions of law referred to us, it is necessary to take into two important developments. The first is that the appellant is no more. The second is that the party, whom the appellant wanted to cross-examine, viz., Sundaram is also no more. Therefore, the questions as well as the silver bars alone survive for our adjudication.

8. It is seen from para 2 of the order of the Tribunal that even the appellant did not ask for cross-examination of Sundaram. The relevant portion of the order of the Tribunal reads as follows:-

"On a query from the Bench, he has fairly conceded that cross-examination of the said Sundaram was not asked for. He has pleaded that purity alone could not be a factor for confiscation of the silver. In the alternative, he has pleaded for release of the silver on payment of redemption fine."

9. Moreover, the applicant appears to have pleaded before the Tribunal for the release of the silver on payment of redemption fine.

10. The seizure took place about 24 years ago. The reference itself was of the year 2000. Today, even if we uphold the contention that Sundaram ought to have been produced for cross-examination, we may have to remit the matter back, but, it is impossible to produce Sundaram for cross-examination.

11. Therefore, taking into account the developments and also taking into account the admission made by Nanniar, we are of the considered view that the Tribunal did not commit any mistake in relying upon the statement. Therefore, the questions of law are answered against the applicants and in favour of the Department.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

ssk.

To:

1. The Assistant Registrar
   Customs, Excise and Gold (Control)
   Appellate Tribunal,
   South Zonal Bench, Chennai.

2. Commissioner of Customs,
   Tiruchirapalli.

1 cc to Mr.B. Sathish Sundar, Advocate, SR. 12019
1 cc to Mr.V. Sundareswaran, Advocate, Sr. 11842

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AD (CO)
kk 23/3