

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL NO.57 OF 2016

Rajendra G. Bhutada Appellant
Vs.
Union of India & Others Respondents

AND

CUSTOMS APPEAL NO.62 OF 2016

Smt. Bharati Bhutada Appellant
Vs.
Union of India & Others Respondents

Mr. Rajendra G. Bhutada, Appellant in CUAPP-57/2016
present in-person.

Smt. Bharati Bhutada, Appellant in CUAPP-62/2016
present in-person.

Mr. Pradeep S. Jetly with Mr. Jitendra B. Mishra for
the Respondents in both appeals.

CORAM: S.C. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.

DATE : APRIL 17, 2017

P.C:

1. Mr. Ashok Singh, learned Advocate, argued these two appeals on 10-4-2017 along with the Revenue's appeals.

2. The Revenue's appeals being Appeal Nos.90, 91 and 92 of 2015 challenged that part of the Tribunal's order whereunder the Tribunal, while upholding the confiscation of goods, reduced the penalty.

3. We found that there is no substantial question of law arising from such an order. Hence, the Revenue's appeals were dismissed.

4. The argument before this Court on the earlier occasion was that the Tribunal's finding that there was smuggling of currency and that the appellants before us – Rajendra Bhutada and his wife Smt. Bharati Bhutada – are the masterminds, particularly Rajendra Bhutada, would raise substantial questions of law.

5. We indicated to Mr. Ashok Singh that from a reading of the Tribunal's order and in its entirety that does not appear to be the position. We should be consistent and while maintaining the Tribunal's order and direction as far as the penalty is

concerned, we indicated in our order passed on 10-4-2017 that the Revenue's appeals do not raise any substantial question of law.

6. Mr. Ashok Singh, appearing for Rajendra Bhutada and Smt. Bharati Bhutada, who were the appellants in the connected appeals, sought time to take instructions. We made it clear to him that we are not impressed by his arguments and there is a clear finding of fact consistent with the materials placed on record. As is the normal practice and tradition of this Court that, when an Advocate argues an appeal in the absence of the party and the Court expresses its disinclination, purely to accommodate the Advocate and understanding his position as an Officer of the Court we grant him/her time to speak to the client. If the client is unavailable on that particular date, we grant an adjournment. That is only to take limited instructions, namely, whether to invite order of dismissal on merits or to withdraw the appeal considering the disinclination of the Court.

7. Precisely that is what transpired on the earlier

occasion and we are extremely unhappy and distressed to note that when these appeals were placed today to enable Mr. Ashok Singh to obtain the above instructions and after speaking to his clients, he is absent. The clients are present in Court and surprisingly Rajendra Bhutada says that he resides abroad and only for these matters and his daughter's marriage scheduled on 9-5-2017 that he has flown down to India. He wants to change the Advocate. That is how he prays for an adjournment, both on behalf of himself and his wife.

8. We are not inclined to grant this request for adjournment. We feel that Courts cannot be taken for a ride by litigants in this fashion. The Tribunal has clearly held that the said Rajendra Bhutada was the mastermind. He could not have put forward some agent or employee and to deny the allegations against him. The currency was brought illegally and that is also a finding of fact. Thus, being responsible for bringing in the currency and the consequent confiscation thereof he must suffer the penalty. That penalty which was imposed in the order-in-original was scaled down. Even that finding is consistent with

the materials placed on record. The factual materials outline the role of both the appellants, Rajendra Bhutada and his wife.

9. We find that now they cannot question the confiscation of goods and the reduced penalty. These are pure findings of fact. Therefore, our disinclination remains and what we orally indicated to Mr. Ashok Singh on the earlier occasion is now being set down in this order. We refuse the request for an adjournment. We dismiss the appeals.

(PRAKASH D. NAIK, J.)

(S.C. DHARMADHIKARI, J.)