

Customs, Excise and Gold Tribunal - Mumbai

Capt. Y.R. Kapoor vs Collector Of Central Excise And ... on 20 July, 1983

Equivalent citations: 1983 ECR 2089 D Tri Mumbai

Bench: D T K.S., H Chander

ORDER Harish Chander, Member (J)

1. Capt. Y.R. Kapoor, 129-Shere Punjab Co-operative Society, Mahakali Caves Road, Andheri (East), Bombay has filed an appeal against Order No. F. VIII (CUS) 50-25-Adj/81 889 Pune dated 9.11.1982 passed by the Collector of Central Excise & Customs, Pune.

2. Briefly, the facts of the case are that on 26.2.1981, a sepooy of Central Excise & Customs posted at Burundi Chowky of Harnal Port received a telephonic message stating that a launch carrying contraband goods is likely to land the goods on Burundi shore. The Supdt. Customs, RCP Dapoli immediately proceeded to Burundi with his staff where he met Harnal staff who had also received a similar information and arranged a joint sitting up party. The Inspector, Customs, Dabhol Port was alerted and instructed to arrange sea patrolling between Dabhol and Burundi. On the next day, i.e. 27.2.81, Inspector of Customs Dabhol Port had sent a wireless message to Supdt. RCP Dapoli that one mechanised vessel had stuck up in the rocky reefs at Malai, Agari village off Dabhol Port and that he had received information that the vessel contained contraband goods and that he would proceed to the spot and he further sought assistance. The Superintendent RCP Customs Dapoli thereupon immediately proceeded to Agari village with his staff and saw a mechanised fishing vessel abandoned and stuck up in the rocky reefs near the village. The hull of the vessel was found painted with the name 'YOGI' in Deonagari script on one side. The vessel was a mechanised vessel and superficial examination of the engine of the shattered vessel showed the following marks : "Leyland-53B-409-Dep 400168 ENNORE POWER PW Diesel Delo/SAC-30/SAE-40 Castro-CRB-30". An initial panchanama regarding number of packages, loose goods and the engine was drawn. The goods in the vessel were found to bear foreign marks and were valued at Rs. 14,83,370/-. The goods were confiscated. Capt. Shri Yograj Kapoor was the owner of the vessel.

3. The learned Collector of Central Excise & Customs, Pune had absolved S/Shri Yograj Kapoor, Ahil and Siddique from the charges and had absolutely confiscated the goods under seizure totally valued at Rs. 14,83,370/- and had also absolutely confiscated the mechanised vessel YOGI VRL 2255 which was used in the transport of smuggled goods under Section 115 of the Customs Act, Being aggrieved from the aforesaid order the Appellant Shri Y.R. Kapoor has come in appeal before this Court, for the release of the said confiscated vessel.

4. Shri H.C. Subnani, learned Advocate for the appellant, has submitted before us that the appellant's mechanised vessel 'YOGI' was involved in the smuggling of goods and on 27.2.81 this said vessel was caught. He further submitted that on 13.3.81, a Customs officer visited the residence of the appellant and from him it came to the knowledge of the appellant that his vessel was used for smuggling and that on 14.3.81 the appellant had written a detailed letter to the Customs authorities to the effect that the appellant is the owner of the vessel 'YOGI' and whatever information is being desired from him will be duly given. He has submitted that appellant's letter No. ADI/LR/118/81 dated 14.3.1981 has been discussed by the learned Collector in his Order at page

3, in which he had accepted the ownership of the fishing vessel "YOGI" VRL 2255 and had stated that he had given the vessel on hire to one Shri Raju Anand Machi. He has further submitted that the craft was purchased in the year 1975 and was utilised for fishing purposes upto October 1980. From 1st November, 1980 onwards the craft was given on rental basis to his tindal Raju Anand Machi on a monthly compensation of Rs, 4,000/- for a period of one year. Shri Raju Anand Machi has made an affidavit on 3.11.1980 before the Registrar and Metropolitan Magistrate Esplanade Court Bombay regarding hiring the launch. He has further submitted that the appellant had given a statement to the customs authorities on 23.3.81 which appears at pages 1 to 3 of the Paper Book. He has also submitted that Shri Raju Anand Machi was also produced and his statement was also recorded. He has again submitted that mechanised vessel was given to his tindal Shri Raju Machi and an affidavit to this effect was made on 3.11.80 and a copy of the same was duly filed before the lower authorities and according to this affidavit's terms and conditions the appellant was entitled to a monthly rent of Rs. 4,000/-. The learned Counsel for the appellant has submitted that in view of the affidavit, and the statement "of the appellant, it is clear that the mechanised vessel was used for smuggling without the knowledge of the appellant and the learned Collector while passing the order had discussed in the Order-in-original in the last para with the following observation ; "I am inclined to accept the say of Captain Kapoor in as much as he had hired out the vessel to Shri Machi and the said vessel was in the custody and under control of Shri Raju Anand Machi. On knowing the seizure of the vessel Captain Kapoor intimated the Assistant Collector of Customs, Mahableshwar giving the facts in detail and also produced Shri Raju Anand Machi as soon as he was located by him. It appears that Shri Raju Machi had tried to implicate Captain Kapoor in his subsequent depositions. There is however, no corroborative independent evidence to prove that Captain Kapoor had knowingly permitted the use of his vessel 'YOGI' as a means of transport for carrying smuggled goods. On the other hand Shri Raju Anand Machi even after knowing that the vessel 'YOGI' was not lying idle at Darukhana at Bombay, he continued to visit the Customs Office and obtained the signature of the Customs Officers in the Chopdi to show that the vessel did not sail upto 25.2.81 even though it had admittedly gone to Dubai during that said period. The learned Counsel has submitted that in view of the above observations of the Collector, no guilt on the part of the appellant is established. He has further submitted that the vessel is in a very bad state and the appellant had taken loan for the purchase from the Gujarat State Finance Corporation. He has further submitted that the vessel was damaged and the insurance will not pay any amount till its release. He has also submitted that the learned Collector has not given any reasons for the confiscation of the vessel. He has further submitted that there is no guilt on the part of the appellant in any way, and as such the vessel should be released.

5. Shri H.K. Pattekar, the learned Departmental Representative has submitted before us that the appellant had full knowledge of the guilt and as such confiscation of the vessel under Section 115(2) was quite in order. He relies on the last para of the Order-in-Original Section 115(2) of the Customs Act runs as under ;

Any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal and that each of them had taken

all such precautions against such use as are for the time, being specified in the rules.

Provided that where any such conveyance is used for the carriage of goods of passengers for hire, the owner of any conveyance shall be given an option' to pay in lieu of the confiscation of the conveyance a fine not exceeding the market price of goods which are sought to be smuggled or the smuggled goods, as the case may be.

6. He has submitted that in view of the provisions of Section 115(2) the order of the Collector is correct and the appellant's appeal needs to be dismissed. He has further submitted that the burden of proof is on the appellant to prove that "he had no knowledge.

7. We have heard both the sides. The facts of the case are admitted by both the parties. There is no dispute as to the same. We find that the learned Collector has not given any option under Section 125 in the form of redemption fine. As regards appellant's advocate's argument that there is no evidence to show that the vessel was used without the knowledge of the appellant for smuggling, the same is not tenable. The conditions for confiscation under Section 115(2) are fully satisfied in the instant case. However, we find that no option for redemption of the vessel on payment of fine has been given. Keeping in view the facts and circumstances of the case, we feel that a fine of Rs. 25,000/- (Rupees twenty five thousand only) in lieu of confiscation shall meet the ends of justice. We hereby direct the revenue authorities to release the trawler after payment of redemption fine of Rs 25,000/- within three months from the date of this order. Except for this modification appellant's appeal is rejected.