
(2003) 156 ELT 180

Delhi High Court

Case No: Criminal Appeal No. 187 of 1995

Enforcement
Directorate

APPELLANT

Vs

Ravi Sharma

RESPONDENT

Date of Decision: Feb. 19, 2002

Acts Referred:

Customs Act, 1962 " Section 108#Foreign Exchange Regulation Act, 1973 " Section 54,
8(1)

Citation: (2003) 156 ELT 180

Hon'ble Judges: R.S. Sodhi, J

Bench: Single Bench

Advocate: Rahul Sharma, for the Appellant; None, for the Respondent

Final Decision: Dismissed

Judgement

R.S. Sodhi, J.

This criminal appeal is directed against the order of the Foreign Exchange Regulation
Appellate Board, dated 10-4-1995,

whereby the Appellate Board has set aside Order No. SDE(R)III/219/90, dated 22-8-1990
of the Special Director of Enforcement and has left

the question of further proceedings u/s 13(2) of the Act open.

2. The facts of the case as have been noted by the Appellate Board are:

on the basis of information gathered from the documents seized after search of one
Baligur Rehman of Hong Kong at Delhi Airport on 14-11-

1984, the premises of Shyam Kishan Sharma (S.K. Sharma) were searched by the
officers of DRI. The search resulted in the recovery and

seizure of incriminating documents, contraband gold and Indian currency. The statements of Baligur Rehman, S.K. Sharma and Ravi Sharma, son

of S.K. Sharma who also resided with his father, were also recorded u/s 108 of the Customs Act, 1962. It would also appear that S.K. Sharma

and the appellant were detained under COFEPOSA. After their release from the prison, the Enforcement officers issued summons u/s 40 of the

Act sometimes in August, 1987. They appeared in response to the summons after obtaining anticipatory bail. None of them admitted anything

which they had confessed before the officer of DRI in their statements u/s 108 of the Customs Act.

3. From the evidence on record the Appellate Board came to the conclusion that the charge framed u/s 8(1) of the Foreign Exchange Regulation

Act for abetment was not made out although it is possible that there can be a charge u/s 13(2) of the Act. However, on a consideration of the

material the Appellate Board gave a finding which is as follows :

12. The statements recorded u/s 108 of the Customs Act can not ipso jure constitute evidence for the purpose of the adjudication proceedings

under the Foreign Exchange Regulation Act, 1973. That apart, the appellant has disputed that statement as involuntary and not true and relied on

the report of his medical examination made in Tihar Jail where he was lodged soon after the statements. The learned Special Director has recorded

that in his Statement u/s 40 of the Act, which is a relevant piece of evidence the appellant disowned his statement u/s 108 of the Customs Act. This

means that there is no valid evidence of any admission of facts Constituting the charge. The appellant's statement u/s 108 of the Customs Act

could not be taken in evidence because the cross-examination of the officer who recorded the statement was denied. Moreover, even the

statement u/s 108 of the Customs Act does not have adequate evidentiary value to substantiate the facts stated therein as those factual particulars

are contradicted by the letter of the Hong Kong Customs authorities in respect of the dates of the appellant's visit to Hong Kong and the amount

of foreign exchange declared on those visits. The foreign exchange mentioned in the statement is US dollars while in the said letter it is ""assorted"".

Moreover, that letter, even if taken in evidence indicates the taking out of foreign exchange. It does not indicate the delivery of foreign exchange to

Baligur Rehman.

13. It is stated in the impugned order that SCN was issued in November, 1988 after completion of investigation. There is nothing to indicate

whether any investigation was made after the statement of the appellant was recorded u/s 108 or after the receipt of the letter of Hong Kong

Customs in November, 1984. No attempt seems to have been made to get at the correct factual details of the appellant's visits to Hong Kong, by

checking with the Indian authorities at Delhi Airport and the Airlines, in spite of factual variance in that regard in Hong Kong Customs' letter and

the appellant's statement u/s 108 of the Customs Act, 1962.

14. As regards the admissibility of Baligur Rehman's statement against the appellant it is to be noted that this statement being in the nature of a third

party's testimony, is not admissible in evidence in view of the denial of his cross-examination in spite of the assertion of that right in reply to the

SCN as well as during the adjudication proceedings.

15. The impugned order also shows that the learned Special Director took into consideration the statement purported to have been made by the

appellant in August, 1987 though this statement was not relied on in the SCN. This is not legally permissible. The learned Special Director records

that the charge further gets substantiated by the revelations of Baligur Rehman, that the said revelations of Baligur Rehman stand corroborated by

virtue of declarations made by Shri Ravi Sharma at Hong Kong airport regarding carrying of the foreign currencies, that this fact has been

confirmed by Customs and Excise Deptt. of Hong Kong vide letter dated 27-11-84, that the said Ravi Sharma had confirmed his visits in his

earlier statement and subsequent statement dated 24-8-87. These conclusions, in so far as they relate to the appellant, are contrary to facts on

record. Baligur Rehman"s statement does not implicate the applicant in respect of the charge. Hong Kong Customs" letter does not confirm

appellant"s visit in June, 1984; nor does it corroborates the amount and nature of foreign currency. Apparently, the investigating agency was aware

of the inadequacy of the evidence to bring home the charge as they have relied on the statements (though not admissible) for proving the transfer of

the foreign exchange and on the Hong Kong Customs" letter for proving the amount (though it is contrary to the statements) as this letter does not

prove the transfer of foreign exchange. It appears from the discussion of the so called evidence in the impugned order that the learned adjudicating

officer has not correctly appreciated the arguments of admissibility of evidence and evidentiary value of a piece of evidence as also the legal

implications of these two concepts.

4. It is evident that the statement made u/s 108 of the Customs Act by the accused does not find corroboration from the letter obtained by the

appellant from the Hong Kong Customs Authorities, in which event this statement is inaccurate and not worthy of reliance as it is contradicted by

the evidence placed on record by the Department. In that view of the matter, I find that the reasoning of the Appellate Board cannot be faulted

with. I, Therefore, affirm the same.

Crl. A. 187/1995 is dismissed.