

CASE NO.:
Appeal (civil) 683 of 2008

PETITIONER:
Union of India

RESPONDENT:
Anil Chanana & Another

DATE OF JUDGMENT: 25/01/2008

BENCH:
S.H. Kapadia & B. Sudershan Reddy

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P. (C) No.10058 of 2007)
KAPADIA, J.

Leave granted.

2. This appeal is directed against judgment and order dated 17.10.06 in Writ Petition (C) No.12912 of 2006 passed by the Delhi High Court whereby the writ petition filed by Union of India against the Order dated 25.5.06 of the Chief Commissioner of Customs (DZ) in a Compounding Case stood dismissed. By the impugned judgment, High Court has upheld Order No.2/CCC(DZ)/SCM/2006 passed by Chief Commissioner of Customs (Compounding Authority) compounding the offences under Sections 132 and 135(1)(a) of the Customs Act, 1962.

3. On the basis of specific information Anil Chanana-respondent No. 1, who alighted from British Airways\022 flight from London and walked through Green Channel, was intercepted by DRI Officers at the exit gate of the arrival hall of IGI Airport on 11.8.04. On personal search, two sets of diamond earrings were recovered from his coat pocket along with US\$1900. Further, an invoice dated 10.8.04 evidencing sale of such earrings to respondent No.1-Anil Chanana along with VAT Declaration Form filed by Anil bearing stamp of Customs Authority, London, was also recovered. Further, the search of his baggage resulted in recovery of two empty plastic jewellery boxes kept inside two cardboard boxes (containers). The value of two pair of diamond earrings mentioned in invoice dated 10.8.04 was of #1,40,847.41 equivalent to Rs.1,16,90,300. On 12.8.04 Anil\022s statement was recorded under Section 108 of the Customs Act, 1962 in which he stated that the said earrings were gifted to him by his friend in London. The name of his friend was Bhupendra Kansagara whom he had met for the first time three years earlier; that, he got VAT Declaration Form from British Customs so that he could get refund of VAT; that, on arrival he did not declare the value of dutiable goods in the Customs Declaration Form; that though he was a frequent traveller he was not fully aware of Customs Law. On 12.8.04 Anil was placed under arrest for having committed offences punishable under Sections 132 and 135 of the Customs Act, 1962 (for short, \0231962 Act\024) for failure to declare dutiable goods in Customs Declaration Form and for having walked through the Green Channel with intent to evade the payment of duty and for making willful mis-statements and suppression of material facts. On 16.8.04 Anil voluntarily deposited customs duty amounting to Rs.47,72,521. On 19.8.04 he was granted bail after he had deposited the duty.

4. It is important to note that in his first bail application Anil stated that when he was approaching the Red Channel the DRI Officers along with the Customs Officers forcibly took him to the

Green Channel.

5. On 24.9.04 show cause notice was issued demanding duty amounting to Rs.47,72,521 and for confiscation of seized earrings and imposition of penalty. On 30.9.04 proceedings for prosecution of Anil was launched in the Court of Addl. Chief Metropolitan Magistrate, Patiala House, New Delhi.

6. On 18.1.06 Anil applied for compounding the offences in which application he stated that the two pairs of diamond earrings were gifted to him by his friend in United Kingdom on the occasion of marriage; that the invoice stood issued in his name which indicated the value of two pairs of diamond earrings solely for claiming VAT refund at London Airport; and that, Anil was not required to pay any money towards the value of the invoice. In his application Anil stated that his flight landed at I.G.I. Airport, New Delhi, and since he was tired he entered the Green Channel area due to oversight, though he wanted to make a declaration about the two pairs of diamond earrings and seek clarification regarding the duty liability. This application was made on 18.1.06 on which date Anil simultaneously also moved an application for settlement of his case under Section 127B of the 1962 Act.

7. On receipt of his application for compounding the offences under Sections 132 and 135(1)(a) of the 1962 Act, the Compounding Authority called for a report from the Reporting Authority, namely, from DRI and Customs Department under Rule 4(1) of the Customs (Compounding of Offences) Rules, 2005 (hereinafter referred to as \0232005 Rules\024). On 9.3.06 DRI submitted its report under Rule 4(2) whereas on 21.2.06 the Customs Commissioner (Ing.) also Reporting Authority submitted its report under the said Rule. Vide DRI report, it was pointed out to the Compounding Authority that the invoice was in the name of Anil and not of Kansagara; that refund was to be claimed by Anil and not by Kansagara; that the earrings were recovered after Anil\022s interception and subsequent search and, therefore, Anil\022s claim of voluntarily inviting the Customs\022 Officers was denied. Similarly, the fact that Anil was carrying two pairs of diamond earrings on his person; that there were empty boxes in his baggage also clearly established his intent to smuggle the diamond earrings into India.

8. By impugned order dated 25.5.06 the Compounding Authority, however, compounded the offences punishable under Section 132 and 135(1)(a) and imposed the fine of Rs.15 lakhs. The Compounding Authority in its final order found that the offence for which compounding has been applied was a substantive offence as defined in the guidelines enumerated in Circular dated 30.12.05 issued by the Central Government; that the case was eligible for being compounded; that it was the first offence and that the eligibility of Anil to make compounding application stood verified. Accordingly the Compounding Authority came to the conclusion that the application fell within the scope and eligibility of compounding offences under Rule 4 of the 2005 Rules.

9. Aggrieved by the decision of the Compounding Authority dated 25.5.06 Union of India challenged the said order before the Delhi High Court in Writ Petition (c) No.12912 of 2006 which has been dismissed by the impugned judgment, hence this civil appeal.

10. To recap, Anil has been accused of attempting to smuggling into India two pairs of diamond earrings, collectively valued at

Rs.1,16,90,300 and to fraudulently evade customs duty chargeable thereon which rendered the said goods liable to confiscation under Section 111 of the 1962 Act. According to Department, Anil had knowingly made a false declaration under Section 77 of the 1962 Act before the Customs Authorities at IGI Airport, New Delhi, with regard to dutiable goods carried by him in his baggage, with the sole intent of evading payment of customs duty and has, therefore, committed offences punishable under Sections 132 and 135(1)(a) of the said Act.

11. In order to understand the concept of Compounding it is necessary to quote the relevant portions of Section 137 of the Customs Act, 1962 and Rules 3, 6 and 7 of the Customs (Compounding of Offences) Rules, 2005 which read as under:
\023Customs Act, 1962

SECTION 137. Cognizance of offences. \026

(1) No court shall take cognizance of any offence under section 132, section 133, section 134 or section 135 or section 135A, except with the previous sanction of the Commissioner of Customs.

(2) No court shall take cognizance of any offence under section 136, -

(a) where the offence is alleged to have been committed by an officer of customs not lower in rank than Assistant Commissioner of Customs, except with the previous sanction of the Central Government;

(b) where the offence is alleged to have been committed by an officer of customs lower in rank than Assistant Commissioner of Customs except with the previous sanction of the Commissioner of Customs.

(3) Any offence under this Chapter may, either before or after the institution of prosecution, be compounded by the Chief Commissioner of Customs on payment, by the person accused of the offence to the Central Government, of such compounding amount as may be specified by rules.\024

\023Customs (Compounding of Offences) Rules, 2005

RULE 3. Form and manner of application. \026

(1) An applicant may, either before or after institution of prosecution, make an application under sub-section (3) of section 137 in the form appended [See: Customs series Form No.124 in Part 5] to these rules, to the compounding authority for compounding of the offence.

Explanation.- Where an offence has been committed at more than one place falling under the jurisdiction of more than one compounding authority, then the Chief Commissioner of Customs having jurisdiction over such place where the value of goods seized, or the amount of duty evaded or attempted to be evaded or amount of export incentives wrongly

claimed or attempted to be claimed wrongly is more than others shall be the competent authority.

RULE 6. Power of Compounding authority to grant immunity from prosecution. - The compounding authority, if he is satisfied that any person who has made the application for compounding of offence under these rules has co-operated in the proceedings before him and has made full and true disclosure of facts relating to the case, grant to such person, subject to such conditions as he may think fit to impose, immunity from prosecution for any offence under the Customs Act, 1962 with respect to the case covered by the compounding of offence.

RULE 7. Withdrawal of immunity from Prosecution in certain conditions. \026

(1) An immunity granted to a person under rule 6 shall stand withdrawn if such person fails to pay any sum specified in the order of compounding passed by the Compounding authority, under sub-rule (3) of rule 4 within the time specified in such order or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of the Customs Act, 1962 shall apply as if no such immunity had been granted.

(2) An immunity granted to a person under sub-rule (1) above may, at any time, be withdrawn by the Compounding authority, if he is satisfied that such person had, in the course of the compounding proceedings, concealed any particulars, material or had given false evidence, and thereupon such person may be tried for the offence with respect to which immunity was granted or for any other offence that appears to have been committed by him in connection with the compounding proceedings and thereupon the provisions of the Customs Act, 1962 shall apply as if no such immunity had been granted.\024

12. To begin with, it may be noted that Section 137(3) of the 1962 Act talks about compounding of any offence falling under Chapter XVI which covers Sections 132 and 135. Therefore, \023compounding\024 falls under Section 137 which deals with cognizance of offences. Under Section 137 of the 1962 Act, no Court shall take cognizance of any offence under Sections 132, 133, 134 and 135 of the 1962 Act except with the prior sanction of the Commissioner of Customs. Therefore, the machinery created under the Act is not for the purpose of investigating the crimes, but for enforcement of the provisions of the Act and the prevention of evasion of duty under the Customs Act.

13. Compounding of offences is based on the principle of Disclosure. For purposes of Section 137(3), that disclosure has to be in relation to the facts of the case (See Rule 6 of the 2005 Rules). Anil has been accused of the offence to the Central Government. There is a difference between \023Disclosure in Judicial Review Proceedings\024 and \023Disclosure in cases relating to Compounding of Offences\024. In the case of disclosure in judicial review proceedings, Courts are not concerned with factual findings, however, in cases of compounding of offences it would

be the duty of the Compounding Authority to find out existence of material, outside the evidence, which suggests that disclosure is inaccurate, misleading or incomplete, particularly, when there are contradictions in the stand taken by the applicant earlier when statements are recorded under Section 108 of the 1962 Act and the averments made in the Application for Compounding of Offences. In compounding cases, we have Merit Review vis-à-vis Judicial Review. In the present case, Anil has stated in his Application under Section 137(3) that he had no intent to smuggle as he had entered into Green Channel through oversight whereas earlier in his first bail Application Anil has stated that he was forcibly taken by DRI Officers to walk through Green Channel. The basic rule of disclosure, underlying Section 137(3), is that if there are demonstrable contradictions or inconsistencies or incompleteness in the case of the applicant then application for compounding cannot be entertained. Applications for compounding ought to be disallowed if there are such contradictions, inconsistencies or incompleteness. The reason is obvious. If the applicant is trying to hoodwink the Authority such applications would not be maintainable. That aspect is required to be kept in mind by the Compounding Authority. The test is as follows: Is the applicant candid in the matter of placing of materials and facts before the Compounding Authority without in any way trying to hoodwink the Authority to escape his criminal liability? Equally, the Compounding Authority is bound to discharge the statutory duty of making proper enquiry by examining with care and caution the materials that have been made available. The said Compounding Authority must be satisfied that the applicant has done all he could or need to do in the matter. The applicant has to be One-Time Evader. He has to make clean breast of his affairs. He has to give exhaustive account of the circumstances in which he came to Delhi, how he came in possession of the diamond earrings, whether he had knowledge of the said earrings to be smuggled into India, he has to disclose the name, address and telephone number of the person who gave him the diamond earrings, whether the applicant knew that the earrings were meant to be smuggled into India etc. The applicant has also to explain the circumstances in which he received the goods without knowing that they were being illegally imported or smuggled. In the present case, none of the above tests stands fulfilled. Therefore, the Application for compounding the offences under Sections 132 and 135(1)(a), was not maintainable. The contradictions in the two versions given by Anil per se made the Application for compounding liable to be rejected. In our view, neither Anil has fulfilled his obligations nor has the Compounding Authority discharged its statutory duty of making proper enquiries.

14. Before concluding, it may be mentioned that the compounding mechanism in Section 137(3) is to be allowed only in cases of doubtful benefit to the Revenue and to prevent needlessly proliferating litigation and holding up of collections. Compounding cannot be allowed if there are apparent contradictions, inconsistencies or incompleteness in the case of the applicant before the Compounding Authority. It is the duty of the Compounding Authority to ascertain such contradictions before compounding is ordered. In the present case, different versions given by Anil in his statement under Section 108, in his first bail Application and in his Application for compounding itself disqualifies Anil from claiming the benefit of compounding under Section 137(3) of the 1962 Act.

15. None of the above aspects have been examined by the Compounding Authority in its order dated 25.5.06 as well as by the High Court in the impugned judgment dated 17.10.06 and

they are hereby set aside. Consequently, the Department's civil appeal stands accordingly allowed with no order as to costs.

JUDIS