Mohamed Hiraz Hassim v Public Prosecutor
[2005] SGHC 23

Case Number : Cr Rev 1/2005, MA 138/2004

Decision Date : 01 February 2005

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Wan Mew Lin Margaret (Braddell Brothers) for the appellant; Janet Wang (Deputy Public Prosecutor) for the respondent

Parties : Mohamed Hiraz Hassim — Public Prosecutor

Criminal Law – Statutory offences – Customs Act – Importation of gemstones into Singapore – Whether appellant liable to pay Goods and Services Tax upon importation and before goods removed from customs control – Section 27(1)(a) Customs Act (Cap 70, 2004 Rev Ed)

Criminal Procedure and Sentencing – Revision of proceedings – Whether conviction unsafe – Whether court should exercise powers of criminal revision – Whether alleged dispute over monetary value of imported goods resulting in serious injustice – Section 268 Criminal Procedure Code (Cap 68, 1985 Rev Ed)

Criminal Procedure and Sentencing – Sentencing – Benchmark sentences – Benchmark sentences – Whether sentence manifestly excessive – Whether correct base figure used in determining amount of fine – Whether median fine should have been imposed – Whether fine imposed consistent with benchmark sentence

Revenue Law – Goods and services tax (gst) – Fraudulent evasion of GST – Whether appellant liable to pay GST upon importation of gemstones into Singapore – Whether known or designated buyer for imported goods necessary before appellant liable to pay GST – Section 8(4)Goods and Services Tax Act (Cap 117A, 2001 Rev Ed)

1 February 2005

Yong Pung How CJ:

1 This was an appeal against the decision of District Judge Aedit Abdullah ("the judge") in District Arrest Case No 38587 of 2004. The appellant, Mohamed Hiraz Hassim, pleaded guilty to a charge of fraudulent evasion of goods and services tax ("GST") on 66 lots of gemstones, an offence punishable under s 130(1)(f)(i) of the Customs Act (Cap 70, 2004 Rev Ed). The appellant was sentenced to a fine of $25,000.00, with four months' imprisonment in default.

2 The charge against the appellant was as follows:

> You, Mohamed Hiraz Hassim, Male, 30 years old, Sri Lankan, Passport No. N1293233, are charged that you on or about the 24th day of August 2004, at about 9.40 pm, at the Arrival Hall Customs Duty Office, Changi Airport Terminal 1, Singapore, were concerned in the fraudulent evasion of Goods & Services Tax (GST), to wit, $1,664, by submitting an invoice which showed an incorrect value for payment of GST on 66 Lots of Gemstones imported into Singapore from Bangkok by flight no. TG 421, the amount of GST evaded being the difference between the actual GST payable of $2,164.15 and the GST of $500.00 paid vide POS Receipt No. 01889 dated 24 August 2004, and you have thereby, by virtue of Sections 26 and 77 of the Goods and Services Tax Act (Cap 117A), paragraph 3 of the Goods and Services Tax (Application of Legislation Relating to Customs and Excise Duties) Order (Cap 117A, Order 4) and paragraph 2 of the Goods and Services (Application of Customs Act) (Provisions on Trials, Proceedings, Offences and Penalties)

Order (Cap 117A, Order 5), committed an offence under section 130(1)(f) of the Customs Act punishable under section 130(1)(f)(i) of the same Act.

3 On appeal, the appellant argued that the fine imposed was manifestly excessive. In addition, the appellant filed a petition for criminal revision against his conviction. I dismissed both the petition and appeal, and set out my reasons below.

The Statement of Facts

4 In the proceedings below, a Statement of Facts ("SOF") was read to the appellant, and the appellant admitted to the contents of the SOF without qualification. The SOF read as follows:

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1. Accused is Mohamed Hiraz Hassim, 30 years old, Male, Sri Lankan National, Passport No. N 1293233.

2. On 25 August 2004, at about 4.00 a.m., accused was placed under arrest at Customs, Special Investigation Branch office at 21 Keppel Road Singapore, for fraudulent evasion of the Goods and Services Tax (GST).

Facts Pertaining to the Charge

3. On 24 August 2004 at about 9.40 pm, Customs officers on duty at the Customs Duty Office Arrival Hall, Changi Airport Terminal 1 were approached by the accused to pay the GST on his goods consisting of 66 lots of gemstones. The accused had brought these goods into Singapore from Bangkok, Thailand, on Flight No. TG 421 for sale to a Singapore client. For purposes of enabling the Customs officer to assess the GST to be paid on the goods, the accused handed over to him one unnumbered invoice dated 24 August 2004 which purported to reflect their total value as being $10,000, based on the value the GST amount of $500 that was collected from him.

4. After the payment of GST, the officers examined the gemstones and suspected that the value given might be underdeclared. Upon questioning, the accused admitted that he had suppressed the value of the 66 lots of gemstones and that their actual value is $43,282.75. He was detained.

5. Investigations revealed that the accused under declared the value of the gemstones he presented to Customs with the intention of paying a lower amount of GST.

6. Based on the actual value of $43,282.75, the GST payable on the gemstones was $2,164.15. The amount evaded is the difference between the amount payable and paid, i.e., $1,664.14.

The decision below

5 The judge accepted the appellant's plea of guilt and imposed a fine of $25,000.00 (with four months' imprisonment in default). The appellant paid the fine.

Issues on revision and appeal

6 The appellant filed a petition for criminal revision, claiming that his conviction had been

"unsafe". In addition, the appellant argued that the sentence imposed was manifestly excessive. I shall deal with the issue of criminal revision first, followed by the issue of sentencing.

Principles governing revision

7 The revisionary powers of the High Court are conferred by s 23 of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) and s 268 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC"). Pursuant to such powers, the High Court has the discretion to exercise any of the powers conferred by ss 251, 255, 256 and 257 of the CPC, which include reviewing a conviction passed by the lower courts.

8 The principles governing revision are set out in the case of *Ang Poh Chuan v PP* [1996] 1 SLR 326, where I held at 330, [17]:

> Thus various phrases may be used to identify the circumstances which would attract the exercise of the revisionary jurisdiction, but they all share the common denominator that *there must be some serious injustice*. Of course there cannot be a precise definition of what would constitute such serious injustice for that would in any event unduly circumscribe what must be a wide discretion vested in the court, the exercise of which would depend largely on the particular facts. But *generally it must be shown that there is something palpably wrong in the decision that strikes at its basis as an exercise of judicial power by the court below*.
>
> [emphasis added]

9 In the case of *PP v Lee Wei Zheng Winston* [2002] 4 SLR 33, I elaborated on examples of what constituted "serious injustice". These included cases where a judge exceeded his powers: *PP v Nyu Tiong Lam* [1996] 1 SLR 273; where there was inconsistency in sentencing for two or more offenders participating in the same offence: *PP v Ramlee* [1998] 3 SLR 539; and where the Statement of Facts did not disclose all the necessary elements of the offence but the petitioner pleaded guilty anyway: *Abdul Aziz bin Ahtam v PP* [1997] 2 SLR 96; see also *Chen Hock Heng Textile Printing Pte Ltd v PP* [1996] 1 SLR 745. In addition, the court's powers of revision were exercised when the petitioner pleaded guilty to a wrong charge and was erroneously convicted of a charge which attracted a heavier punishment: *PP v Koon Seng Construction Pte Ltd* [1996] 1 SLR 573.

10 As I held in *Ng Kim Han v PP* [2001] 2 SLR 293 at [15], the fact that petitioners pleaded guilty of their own accord could not be a bar to the exercise of revisionary power. Rather, the fact that a plea of guilt has been entered will mean that the accused loses his right to appeal against the conviction pursuant to s 244 of the CPC. In such a situation, an application by way of criminal revision will be the only means by which the accused can have a wrongful conviction set aside.

11 However, the court's powers of revision are exercised sparingly, and only if the court is satisfied that some serious injustice has been caused which warrants the exercise of its powers of revision. As I held in *Teo Hee Heng v PP* [2000] 3 SLR 168 at [7], "It is certainly not the purpose of a criminal revision to become a convenient form of 'backdoor appeal' against conviction for accused persons who had pleaded guilty to their charges."

12 In the present appeal, the burden fell squarely on the appellant to show that he had suffered some serious injustice. In my view, he failed to do so.

The appellant's argument on the scope of the GST

13 The appellant argued that the movement of the goods from Bangkok to Singapore was not a "transfer" because there was no buyer to transfer the goods to. I found no merit in this argument. GST on the importation of goods is charged, levied and payable as if it were customs duty or excise duty and as if all goods imported into Singapore were dutiable and liable to customs duty or excise duty: see s 8(4) of the Goods and Services Tax Act (Cap 117A, 2001 Rev Ed) ("GST Act"). The term "import" in the GST Act has the same meaning as that in s 3(1) of the Customs Act, which defines "import" to mean "to bring or cause to be brought into the customs territory by any means, from any place, including a free trade zone". Customs duty (including GST) must be paid at the time of importation before goods are removed from customs control, pursuant to s 27(1)(a) of the Customs Act. In other words, it is not a relevant consideration whether or not there was a known or designated buyer for the appellant to transfer the goods to in Singapore. The appellant was thus liable to pay GST when he imported the gemstones into Singapore.

The value of the gemstones and the appellant's submission that his conviction was "unsafe"

14 The appellant claimed that the precise value of the gemstones should have been $10,000.00 and not $43,282.75, and it was on this basis that the appellant claimed that his conviction had been "unsafe". In my view, the appellant's argument for revision did not satisfy the requirement that there had been some "serious injustice" done to him. I noted that the appellant merely asserted that his conviction was "unsafe". Indeed, not once did the appellant claim that the alleged question as to the value of the gemstones amounted to a "serious injustice".

15 In any event, the facts did not support an allegation that there was some "serious injustice". When questioned by the customs officer, the appellant, by his own admission, stated that the value of the gems was $43,282.75. At no point did the appellant dispute this amount during the trial, where he pleaded guilty and accepted the amount of $43,282.75 as recorded in the SOF. In fact, the appellant had every opportunity to dispute the amount of $43,282.75 before and during the trial, but he did not.

16 Furthermore, the appellant's claim that the value of the gemstones was only $10,000.00 (as recorded on the unnumbered invoice he gave to the customs officials) contradicted his admission in para 4 of the SOF that he had suppressed the value of the gemstones and that their actual value was $43,282.75. This discredited his submission on appeal that the value of the gemstones was only $10,000.00. In view of the appellant's unequivocal acceptance of the SOF and his plea of guilt, the appellant's entire argument in relation to the value of the gemstones was therefore relevant only to the question of sentencing, and not to the validity of his plea of guilt and conviction.

17 In terms of the petition for revision, the appellant's submissions in relation to the value of the gemstones had no bearing on the essential elements of the offence that were necessary for his conviction. As I held in *Ngian Chin Boon v PP* [1999] 1 SLR 119 at [10], the very scope of these powers of revision obliges the court to act with great circumspection, and the petitioner must not be allowed to rely on criminal revision as a backdoor means of appeal in cases where no appeal would lie. As I emphasised in the Court of Appeal decision in *Mok Swee Kok v PP* [1994] 3 SLR 140 at 146, [15], the High Court should only exercise its powers of revision "where it is manifestly plain that the offence charged is nowhere disclosed in the statement of facts tendered". Here, the SOF clearly disclosed that the appellant committed the offence of fraudulently evading GST. The appellant himself admitted in para 4 of the SOF that he had undervalued the gems he was importing. The only item that the appellant sought to dispute (*ie* the precise monetary value of the gemstones) bore no relation to his admission and plea of guilt.

18 For the above reasons, I dismissed the appellant's petition for criminal revision.

Whether the sentence imposed was manifestly excessive

19 On the issue of sentencing, the appellant argued that the fine of $25,000.00 was manifestly excessive because the judge used "the wrong base figure to calculate GST payable by the appellant". In my view, the appellant's argument on sentence was completely unmeritorious.

20 The appellant argued that the value of the gems for GST purposes "must be the price of the goods upon transfer in Bangkok" (*ie* $10,000.00) as reflected on the unnumbered invoice that he had initially presented to the customs officers. However, that purported invoice lent little or no weight to his appeal because, after showing it to the customs officers, the appellant himself admitted that the amount of $10,000.00 on the invoice was at an undervalue, and that the actual value of the gemstones was $43,282.75. This totally undermined his assertion on appeal that the invoice of $10,000.00 represented a genuine figure for determining the value of the gemstones.

21 The value of imported goods imported at a price is, for the purposes of GST, determined pursuant to s 18 of the GST Act, which provides:

> **Value of imported goods**
>
> 18. —(1) For the purposes of this Act and subject to the Third Schedule, the value of imported goods shall be determined in accordance with this section.
>
> (2) If the goods are imported at a price in money payable as on a transfer of the property, there being no other consideration, the value is an amount equal to the price, plus (so far as not already included) —
>
> (a) all taxes, duties and other charges levied either outside or, by reason of importation, within Singapore (except goods and services tax); and
>
> (b) all costs by way of commission, packing, transport and insurance and all other costs, charges and expenses incidental to the sale and the delivery of the goods up to the port or place of importation.
>
> (3) Where subsection (2) does not apply, the value of the goods is their open market value as determined in accordance with any written law relating to the valuation of goods for customs purposes, plus (so far as not already included in that value) all such taxes, duties, charges and costs as are specified in subsection (2) (*a*) and (*b*) unless the Comptroller in his discretion determines that the value of the goods is an amount equal to the price as stated in the invoice plus the taxes, duties, charges and costs as specified in subsection (2) (*a*) and (*b*).

22 At trial, both the Prosecution and the judge had accepted the appellant's own statement that the price of the gemstones was $43,282.75. If there was ever any question as to the accuracy of this figure, it was clear that neither the Prosecution nor the judge had chosen to doubt the appellant's claim or to inquire further. The judge had therefore accepted the appellant's own statement of this fact, and proceeded to sentence the appellant on that basis. As for the appellant, he had himself supplied the precise value of the gemstones to the customs officer, and not once after that did he challenge that value of $43,282.75, even though he had ample opportunity to do so prior to his plea of guilt and sentencing. In the absence of any credible evidence to the contrary, he should not be permitted to challenge this finding on appeal, especially because the above figure was determined by his own admission. Thus, I was of the view that the judge's decision to accept the value of $43,282.75 as the price of the gems for sentencing purposes should be left undisturbed.

23 However, I would take this opportunity to add that it might be prudent in these types of cases for the Prosecution to consider subjecting similar imported goods (*eg* the gemstones) to a proper appraisal and valuation, even in cases where the accused has apparently admitted to a specific price under questioning by customs officers. This will allow the value of the imported goods to be independently verified. In my opinion, at least three potential problems may be avoided if a proper and independent valuation of the goods is obtained:

(a) The accused may have under declared the value of the goods even after he has been questioned by the customs officers, and would therefore have managed to escape an even heavier fine.

(b) The accused may have overstated the value of the goods due to his own ignorance, and would therefore have been subjected to a greater fine than is appropriate.

(c) The goods may have been counterfeit, or have been of a completely different nature from what the accused and customs officers believe them to be, and so the charges framed may have been erroneous, and an inappropriate sentence may have been imposed.

24 Therefore, in future cases of this type, it might be prudent for either the Prosecution or the trial judge to direct that such goods be properly appraised and valued before deciding on the appropriate fine to impose. It may be potentially risky for a judge to calculate the fine by relying solely on the admission of the accused person who, by virtue of his own admission, has already proved himself dishonest at least once.

The sentencing benchmark

25 The appellant claimed that the fine of $25,000.00 was by itself manifestly excessive, and he gave the following reasons:

(a) the appellant is a first-time offender;

(b) the minimum fine is $5,000.00;

(c) the maximum fine is $33,282.80;

(d) the "median" fine is $14,141.40; and

(e) there was no aggravating factor for the judge to impose a fine on the heavier side of the "median" figure.

26 I was not at all persuaded by the unusual line of argument adopted by the appellant concerning the use of a so-called "median" figure for sentencing purposes. I was of the view that the sentence imposed by the judge was not manifestly excessive. When determining an appropriate sentence in relation to GST offences, I held in *Chia Kah Boon v PP* [1999] 4 SLR 72 at [15] that there are two competing considerations that the court has to take into account:

(a) On the one hand, the fines had to be of an amount which the appellant could reasonably pay given his financial means.

(b) On the other hand, the fines had to be fixed at a level which would be sufficiently high to achieve the dual objectives of deterrence, in terms of deterring both the appellant and other

importers from evading GST on imported goods in future, and retribution, in the sense of reflecting society's abhorrence of the offence under s 130(1)(a) of the Customs Act.

27 Here, the judge imposed a fine of $25,000.00. This was a sum slightly more than $24,962.10, being 15 times the GST evaded (*ie* $1,664.14 x 15). In my view, the fine of $25,000.00 was therefore entirely in line with the benchmark sentence of 15 times the customs duty or tax leviable which I previously affirmed in *Moey Keng Kong v PP* [2001] 4 SLR 211 at [14]:

> The benchmark of 15 times applied was also consistent with current subordinate courts' sentencing practice with the range of sentences currently being imposed as between 15 to 20 times the customs duty or tax leviable.

28 For these reasons, I dismissed the appeal against sentence.

Petition and appeal dismissed.

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