

P. Ganesan and Others Vs. Cc, Chennai

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Chennai

Decided On : Jan-02-2014

Judge : The Honourable Mr. P.K. Das, Judicial Member & the Honourable Mr. Mathew John, Technical Member

Appeal No. : C/S/40972 of 2013 in C/41333 of 2013 C/Section of 40989 of 2013 in C/41357 of 2013 C/S/41057 of 2013 in C/41423 of 2013 C/S/41117 of 2013 in C/41453 of 2013

Appellant : P. Ganesan and Others

Respondent : Cc, Chennai

Judgement :

Per: Mathew John, J.

1. Stay petitions in respect of the above four appeals filed by different persons, in matters arising out of the same impugned order are being considered in the present proceedings. The facts of the case are broadly that the first applicant Shri P. Ganesh, sent a consignment from Singapore to Chennai Airport. The customs officers had intelligence that there would be an attempt to remove this consignment from customs area without filing Bill of Entry and paying customs duty and therefore they kept surveillance. The officers intercepted the consignment just outside the gate of the Air Cargo Complex when the goods were actually removed without filing Bill of Entry and paying duty. The goods were

seized. On investigation, the DRI found that the goods were sent by Shri P. Ganesh describing it as Auto spare parts. On examination of the goods the consignment was actually found to contain various electronic goods like Handy cam, Video camera, Battery charger, USB port connecter etc. In this operation Shri M. Ramesh, the second applicant, G card holder of M/s. India Impex Logistics Pvt. Ltd., A Customs House Agent, was found to have played an active role. He had cleared another consignment under Air way Bill No. 17693167620 dated 26-02-2011 in the name of Timken India (Pvt.) Ltd which had arrived by Emirates flight EK 0546 dated 23-02-2011. The sticker of that cargo was taken out and pasted on the seized consignment. It also came to light he had made arrangements for shifting the cargo from inside the warehouse to the near the gate of the warehouse for eventual removal without payment of duty. He got the goods removed using such fraudulent sticker and made arrangements for the vehicle to transport the consignment from Air cargo complex. The third appellant Shri A. Saravanan, owned a shop in the Ritchie Street, Chennai, for whom the cargo was meant. During the investigation, it was found that Shri A Saravanan, had furnished the information to Shri M. Ramesh, to identify the cargo for removal without payment of duty. Revenue also had a case that two such consignments were removed in such manner in the past. The fourth applicant is Airport Authority of India, who is the custodian of the goods at the airport.

2. We have heard the submissions on both sides. In the case of Shri M. Ramesh, the Ld. Counsel submits that he was simply sitting in the vehicle outside the Aircargo Complex and had not played any role in smuggling the goods. Shri A. Saravanan, submits that the goods did not belong to him and he did not make any attempt to smuggle the goods. Clearing the goods was the responsibility of M. Ramesh. Representative of the International Airport Authority of India (IAAI), submits that IAAI was never aware of this malpractice and they had co-operated with DRI for effecting the seizure and it is very strange that after having cooperated, they have been penalized. All the parties request for admission of their appeal without pre-deposit.

3. Opposing the prayer, Ld. AR on behalf of the Revenue submits that the roles of Shri. P Gamesan, Shri M. Ramesh and Shri. A Saravanan are clearly brought out

in the impugned order. She submits that all the three have conspired together to defraud Revenue. They have done so on past occasions also.

4. In respect of the role of IAAI she submits that the entry in their registers relating to the consignment imported by Timken India (Pvt.) Ltd. was left open to facilitate clearance of the impugned consignment.

5. We have considered the submission on both sides, we find prima facie that the first three appellants have clearly played active roles in smuggling the cargo without payment of duty from the Air Cargo Complex. Shri P. Ganesh, prima facie is the owner of the goods. Shri M. Ramesh was an employee of a cargo holder of a CHA, had access to the customs area and actively participated in the smuggling. Shri A. Saravanan was aware of the smuggling and he provided information to Shri M. Ramesh for identifying the cargo. All the three played major roles in the manner suggested above. In the case of International Airport Authority, no awareness at an organization level is prima facie brought out. Its actual role will be examined the time of final hearing. Considering the above aspects and prima facie view we direct the appellants to make pre-deposit for admission of their appeals as under:-

1. Shri P Ganesh - Rs. 3.5 lakhs

2. Shri M. Ramesh - Rs. 2.5 lakhs

3. Shri A. Saravanan - Rs. One lakh

6. The requirement of pre-deposit is waived in respect of the IAAI. 7. Pre-deposits are to be made within a period of eight weeks. Upon such deposit, pre-deposit of balance dues from the appellants is waived and its recovery thereof stayed till the disposal of the appeal. The compliance to be reported on 06.03.2014.

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