Killick Air Courier and Vs. Commr. of Cus.

Killick Air Courier and Vs. Commr. of Cus.

SooperKanoon Citation : sooperkanoon.com/11508

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-09-1997

Reported in : (1998)(97)ELT182Tri(Mum.)bai

Appellant : Killick Air Courier and

Respondent : Commr. of Cus.

Judgement :

1. The facts, so far as they are necessary for disposal of this appeal, which led to the passing of the order of the Commissioner impugned in the appeal are, these : The appellants M/s. Killick Air Couriers & Forwarders Ltd. is a courier which collects for delivery abroad and delivers in India parcels and packets from consignees. It is not in dispute that the appellant had contracted to deliver to consignees in India packets and parcels which were booked for carriage to India, from Singapore and Hongkong by M/s. Citi Links. The system of delivery of such packages as explained by the advocate for it, and has not contested by the departmental representative is as follows: The courier company abroad gives these goods to the onboard couriers, the person who actually carries the packets and parcels. The onboard couriers were employees of M/s. Patel Onboard Couriers (POBC) in this appeal. (We are not concerned with the onboard couriers of other courier companies for disposing of this appeal). The onboard courier passes on the packets and parcles to their local representative at the airport after arrival of the flight. The local representative gets the goods cleared through Customs if necessary, after examination and where required, after paying the duty

assessed on the goods which it arranges to collect from the consignees through the local courier, who is in this case the appellant.

2. The Customs, on acting on an information found that there was an attempt made to remove courier bags after they were unloaded from the aircraft in order to avoid subjecting to X-ray examination. Following up on the information they intercepted and examined one courier packet No. AI. 826123 which was booked for the courier by POBC from Singapore on Air India flight No. AI 103 which landed on 22-12-1993. Of the 23 packets contained in this bag two were found to contain computer parts totally valued at Rs. 14.46 lakhs approx. One each of these parcels was of consigned to M/s. Digi and M/s. Tritech Systems at 713 Navjeevan Society, Lamington Road, Mumbai. Subsequent to the seizure the Customs conducted extensive investigations and issued notices to large number of persons on the ground that they were part of an arrangement whereby contraband were imported through courier cleared without examination and payment of duty and delivered to the consignees. The Commissioner after hearing the parties confiscated the goods and imposed penalty Under Section 112(a) and (b) of the Customs Act including penalty on the appellant. Hence this appeal.

3. The imposition of penalty on the appellant follows upon the Commissioner's finding that its employees had been delivering packages similar to the packages seized from D.S. Gupta who was the owner of the concerns named in the preceding paragraph at 713 Navjeevan Society, Lamington Road, Mumbai although address of these firms were at 401 and 301 Navjeevan Society, Lamington Road. Commissioner's findings against the appellant are contained in two paragraphs of his order which runs to about 122 pages. These two paragraphs are reproduced hereunder : "It has been admitted by Salim Khan, Ajay Desai, Prakash Jhaveri and Tushar Pandiya that they have been despatching the regular consignment addressed to M/s. Digi Systems and M/s. Tritech Systems through M/s. Killick AirCouriers. It was their delivery peon who used to deliver these consignments at Room No. 713, Navjivan Society to D.S. Gupta and his office staff. In his statement the delivery peon Harish M. Madan has stated that when he pointed out the discrepancy of the addresses to Shree D.S. Gupta, he had told him that he is owner of these companies and that such consignments addressed to

these companies should be delivered at his office at Room No. 713, Navjivan Society. Had the delivery been stopped due to such discrepancy in the addresses, the activities of Salim Khan and his firends would perhaps have been disclosed earlier. M/s. Killick Courier by continuing to forward such consignments in spite of the discrepancy in the addresses, have rendered themselves liable for action under the provision of Customs Act, 1962. All these consignments as is clearly evident from the statements of Salim Khan, Ajay Desai and company, Sanjay Mishra, Kailash Rajput would prove that these consignments were containing computer and electronic parts.

As such M/s. Killick Couriers were found to have been involved in carrying and smuggling of computer/electronic parts in their courier bags. They have thus rendered themselves liable for action under Section 112(a) and (2) of the Customs Act, 1962." 4. It will be seen from a reading from this finding that Commissioner has imposed a penalty on his findings that if the incorrect deliveries had not been made the activities of Salim Khan and his friends would perhaps have been disclosed earlier. A consideration of the facts which are not in dispute would show that the appellant was in no way involved either in the importation of the goods, or their clearance through Customs. It came into the picture when it collected these packages from the overseas onboard courier after they had been cleared from Customs.

In other words its role was limited to collecting the packages after clearance from Customs and delivering them to the local consignees.

Nowhere is it alleged in the order that appellant had nothing to do beyond this. Viewed in this context it is not possible to accept the Commissioners finding that the appellant became liable for penalty.

Clause (a) of Section 112 would apply to a person who because of his acts or omission renders any goods liable to confiscation under Section 111 or based on such acts or omission. Since the appellant was not concerned in any manner in the importation of the goods this clause would not apply to it. For penalty to be imposed under Clause (b) it would have to be shown that the appellant was knew or had reason to believe that the goods were liable to confiscation. There is nothing in the order of the Commissioner which would lead to a view that it had, or ought reasonably to have had, such a belief. As was contended the appellant or its employee would not be in a position to know the contents of the parcels which they were delivered. Knowledge of the contents of the goods is limited to the declaration that might have been made by the consignor of the goods or any other person abroad. The Commissioner himself does not find that the appellant was aware of the contents.

5. He also does not find that either Harish Madan the person who actually delivered the goods or any other employee of the company knew or had reason to believe, that the parcels which had been delivered to any of the addresses at Navjeevan Society contained computer parts. No notice itself was issued to Madan or to any of these employees. If the Company as a corporate entity is to be found liable to penalty under Section 112 it must follow that it has carried out acts liable to penalty through any of its employees. Where no penalty has been imposed on any of these employees Under Section 112 we do not find it possile to understand how the penalty has been imposed on the company as a corporate entity. The statements of Madan indicate that he was told by Gupta who said that he was in fact the actual proprietor of the two firms and that the parcels should be delivered to him at 713. This may at the most indicate some basic carelessness on the part of the individual employee carrier of the company. It cannot be by itself mean a basis for imposition of penalty on the employee himself much less than the company. This alone would be sufficient to allow the appeal.

6. Apart from these considerations the basis for the imposition of the penalty by the Commissioner is unsound. He says that if the delivery had not been incorrectly made smuggling activities would have been disclosed earlier. We do not see how this would have happened. It emerged during the hearing that in case a parcel cannot be delivered because of an incomplete or incorrect address or for any other reason by the local carrier, enquiries are set in motion to ask the consignor what is to be done With the parcel. It is only if the consignor's requests that the parcel is returned to him. Only if such an eventuality took place and in course of return of the parcel examination by the Customs showed presence of the contraband could the Customs have known that goods had been smuggled and the racket would

have been exposed and have come to light earlier. In this case such a contingency would probably never had happened. The Commissioner himself finds the goods had been sent from Singapore to the local consignees as part of an arrangement. It is unrealistic to expect that such a consignor would expose its role in the arrangement by following a course of action that would render the consignment liable to Customs examination, when it had gone to a great deal of trouble precisely to avoid such examination.

7. It is thus our view that there is no material whatsoever to sustain imposition of penalty on the appellant.