Hari Impex Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-22-1998

Reported in : (1999)(105)ELT503TriDel

Appellant : Hari Impex

Respondent : Collector of Customs

Judgement :
1. These are four inter-connected appeals arising from the same impugned order, namely, order-in-original dated 18-8-1994 passed by the Collector of Customs-II, Bombay. By the said order a penalty of Rs. 15 lakhs was imposed on M/s. Hari Impex, the main appellants before us and Rs. 5 lakhs each on M/s. J.P. Singh and K.P. Singh, Partners in M/s.

Hari Impex. The other appellant, Shri V.S. Raghvan, has also been imposed a penalty of Rs. 5 lakhs.

2. The case of the Department against the present appellants is that they had attempted to export Printed Circuit Boards (P.C. Boards) by showing grossly over valued price. The F.O.B. value shown in the 16 shipping bills was Rs. 440-445/- per PCB whereas market inquiry revealed that the value of PCB was only Rs. 40/-. Since common issues were involved and the appeals arise from the same impugned order all the four appeals were heard together and are being disposed of by this common order.

3. Shri Harbans Singh, Id. Counsel, appeared for Shri Hari Impex and the two Partners. Shri V.S. Raghvan, appeared in person before us. Shri A.M. Tilak, Id. JDR represented the Department.

4. Ld. Counsel submitted that M/s. Hari Impex was a Partnership firm with Shri J.P. Singh and his four family members as Partners. The Partnership entered into a contract with one M/s. Sahi Enterprises of Dubai for the supply to them of 5600 pieces of PCBs at the rate of Rs. 440/- for one model and Rs. 445/- for another model as per samples.

These PCBs were meant for being used as water purifiers. The appellants were manufacturers of PCBs for use in water purifiers which were manufactured and marketed in India and the price of a basic model of water purifier in India is Rs. 3520/-. As the foreign buyers, instead of buying water purifiers preferred to purchase PCB with know-how from the appellants, Appellants filed 16 shipping bills for export of PCBs in pursuance of their contract valued at Rs. 49,56,0007-under claim of drawback at the rate of 28% ad valorum, in all amounting to Rs. 13,87,680/-. Customs Officers, on suspicion that the goods were over-invoiced detained the consignments and in the course of investigations the residential premises of J.P. Singh and K.P. Singh and the business premises of both the appellants were also searched but nothing incriminating was found. Statement of Shri J.P. Singh was also recorded by the investigating officers. Samples were also drawn from the detained consignments for testing.

5. On the basis of investigations a SCN dated 29-1-1993 (later amended by four corrigendum notices) was issued alleging that the said PCBs were infact meant for being used in black and white TVs and that the prices of each PCB did not exceed the range of Rs. 30/- to Rs. 40/- per piece. It was alleged that the Customs House clearing agents and others who acted as intermediaries were aware of over-invoicing and they were charging high commissions to enable the exporters to export the goods and to obtain drawback on the declared value. Appellants were called upon to show cause why the goods should not be confiscated under Section 113(d) and (i) of the Customs Act and why the drawback claim in terms of provisions of Section 76(1)(b) should not be disallowed on the ground that the

market price of the goods determined by the customs was lower than the drawback claim. The matter was adjudicated by the Collector who passed the impugned order.

6. The Collector found that by mis-declaring the value of PCBs the appellants had claimed drawback which was nearly four times the market value of the goods. After examining the reports of market enquiries regarding the quality and value of the PCBs and the Test Report obtained from Telecom Engineering Centre, unit of Department of Telecommunication of the Government of India stating that the PCBs were made of the cheapest quality material and the market value thereof was around Rs. 60/- per piece and their application was for purposes of video displaying unit, the Collector held that it was absolutely clear that the PCBs were of a cheap quality and the value of Rs. 400/- shown in the shipping bill clearly showed that there was mis-declaration on the part of the appellants. He held that by reason of the mis-declaration of the value of the goods they had become liable to confiscation under Section 113(i) of the Customs Act. The goods had also become prohibited in terms of Section 3(3) of the Export (Control) Order, 1988. In addition he also held that M/s. Hari Impex and Mr. J.P.Singh and Mr. K.P. Singh are liable to penalty under Section 114(iii) of the Customs Act. The penalty on Shri V.S. Raghvan was imposed on the ground that he, along with three other persons, namely, Shri Daleep Mehta, Shri B.T. Gaonkar and Mukal had actively associated in the attempt of export of PCBs, mis-declaring their value with intent to claim higher amounts of drawback.

7. Shri Harbans Singh, Id. Counsel submitted that the reliance placed by the Department on the opinions given by three dealers in electronics (copies at pages 55 to 59 of the Paper Book) do not state categorically that the samples which were inspected by them were the same as were drawn by the Department from the consignments marked for export by the appellants and detained by the Departmental Officer. He drew attention to the panchnama dated 21-1-1993 which only recorded that sealed samples in quadruplicate were drawn from packings covered by each shipping bill. He, therefore, submitted that it has not been established that the price mentioned in the three certificates given by M/s. Paras Electronics, Grafica Display Co. and Suvarna Pt-Etch relates to the same samples

of PCBs detained by the Department. He also invited attention to Rule 8(2)(ii) of the Customs (Valuation) Rules, 1988 and contended that mis-declaration cannot be based on the market price of goods in India but should be in accordance with the value of the goods in international market. In this connection, he also referred to the stay order passed by the Tribunal in the appeal filed by Shri V.S.Raghvan. As regards appellant Shri K.P. Singh, he submitted that there was nothing on record to show that Shri K.P. Singh was concerned with the alleged mis-declaration.

8. Shri Raghvan, appellant in Appeal No. C/238/97-NB, made the submissions in person. He submitted that he was not a Customs House Agent but only a person who had tried to help the appellants in their normal trading activity.

9. The Id. JDR submitted that the PCBs mentioned in the shipping bills were described as those meant for computer. He also submitted that the certificates obtained by the Department were from Traders who had sufficient knowledge about the value of the impugned goods since they were dealing in the said goods, for example M/s. Grafica Display Co.

who were manufacturers of PCBs. There cannot therefore be any doubt about their knowledge about the impugned goods and their market price.

If the appellants had any doubt about the technical competence of persons giving certificate, they should have proved it by other competent evidence or by asking for their cross-examination. Since they have not done any such thing at the time of the adjudication, such points should not be raised at the appellate stage. As regards the involvement of Shri K.P. Singh, Id. JDR submitted that it was on record that he had gone to Bombay and had contacted various persons in connection with the attempted export of the impugned goods.

10. We have considered the submissions made before us and have gone through the records. The main appellant, M/s. Hari Impex have not been able to show any material which would cast doubt on the evidence relied on by the adjudicating authority. Though the Id. Counsel had disputed the veracity of the samples, which had been inspected by the three traders, they had not been able to show that the

PCBs shown to them were not of the type which were contained in the consignments detained.

Further, they have also not been able to show any contrary evidence to controvert the opinion given by the Telecom authority. As regards the procedure required to be followed under Rule 8(2)(ii) of the Customs Act, it is not in dispute that the said Rule provides for ascertaining the value of the goods vis-a-vis the market price of the goods in India. It is not necessary in terms of the said Rule for the Department to ascertain the value of the said goods in the international market.

11. As regards the involvement of Shri K.P. Singh, we find that there is some force in the submission made by the Id. Counsel that neither the SCN nor the impugned order have categorically brought out any direct involvement by him. We, therefore, give him the benefit of doubt and set aside the penalty imposed on him.

12. As regards the appellants Shri V.S. Raghvan, we find that the said appellant was not a licensed Custom House Agent. Nevertheless his statement that he was helping the appellants in their normal trading activity and he was not aware of any attempt to misdeclare the value of the goods involved does not carry much conviction since in the statements given by the other three persons, his role as an active person in the entire transaction has not been disputed. Since he does not appear to be a direct beneficiary of the drawback claim and in view of the submissions that he is not a man of means, we reduce the personal penalty on him to Rs. 25,0007- (Rs. Twenty five thousand).

13. Barring the aforesaid modification the impugned order is confirmed and all the four appeals are disposed of in above terms.