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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-13-1998

Reported in : (1998)(104)ELT336TriDel

Appellant : Nepal Singh

Respondent : Commissioner of Customs

Judgement :

1. This appeal of Shri Nepal Singh is directed against the confiscation of his truck under adjudication Order No. 45/95 of the Commissioner of Customs, Lucknow dated 12-9-1997. The truck was confiscated as the same was used in the smuggling of dry ginger from Nepal to India. The adjudication order also confiscates dry ginger under Section 111D of the Customs Act, as it has been held to be not of Nepalese origin and is not permitted to be imported.

2. Arguing the appeal, Shri M.C. Sharma, Id. Advocate, submits that confiscation of the truck under Section 115(2) of the Customs Act was not legal at all. The truck was a public carrier and the same is not liable to confiscation unless the owner or his agent was aware of the offending nature of the goods. With regard to the awareness of the owner of the truck about the offending nature of the goods, the Id.Counsel refers us to the finding in the adjudication order that "there is no direct or indirect evidence implicating Shri Nepal Singh in the case." He also submits that his driver Shri Darshan Singh, had also stated before the customs authorities that the goods were of Nepalese origin. He contended that in the facts of the case, there is no material to hold that the owner of the truck or his agent were aware of

the of fending nature of the goods in question, thus permitting confiscation of the truck.

3. Countering the arguments of the appellant, Shri H.K. Saran, Id. SDR submits that the co-driver of the truck, Shri Brij Mohan had stated to the customs officers that he had been informed by Bajrang Transporters (from whose premises goods were loaded) that the goods are of foreign origin. Shri H.K. Saran submitted that this evidence shows that the co-driver, agent of the owner, was aware of the non-Nepali origin of the goods. The adjudicating authority has confiscated the truck, taking into account the entire evidence. He also submitted that under the adjudication order, other persons connected with the offence had also been punished, along with confiscation of the offending ginger. Shri Saran submits that none of the parties have filed appeal, which is an admission that the offence had been committed knowingly. He also referred to the finding in the adjudication order that the driver and the co-driver were aware of the fact that the ginger was not of Nepalese origin and this finding has not been challenged by the importer of the ginger or other parties concerned with the offence. He also submitted that it is of significance that the driver and the co-driver and other parties punished under the common adjudication order have not filed appeals.

4. In his reply, Id. Advocate of the appellant submits that the responsibility of a driver in regard to a public carrier is very limited and should be understood in the context of the transactions. He submitted that the goods under import were covered by invoice and other documents showing the goods to be of Nepalese origin. He also emphasised that the Customs authorities had assessed the goods to import duty on the Indian side. In these circumstances, the driver had no reason to believe that these goods were not of Nepalese origin and were offending in nature. He also draws our attention to the decision of the CEGAT in *Shipra Ghosh v. Commissioner of Customs Prev.* [1997 (91) E.L.T. 679 (Tribunal)] wherein confiscation of conveyance was held to be not valid even in a situation where the dry ginger was imported without any valid documents. He also relied on the judgment of the CEGAT in *Vijay Kumar v. C.C., Delhi* [1996 (78) E.L.T. 62 (Tribunal)] wherein confiscation of conveyance was set aside in the absence of evidence that the owner of the truck or his agent or person incharge of the truck

was not found to be having any knowledge of the truck being used in the carriage of smuggled goods.

5. We have perused the records of the case and have considered the submissions made by both the sides. In the adjudication order, the Commissioner has clearly held that the owner of the truck was in no way involved or aware of the smuggling. The only evidence relied upon for confiscation of the truck is the statement of the co-driver that he had heard from Bajrang Transporters, that the goods were of foreign origin.

We find that the goods in question were covered by valid documentation.

The goods had also been assessed by the Customs authorities accepting them to be licit import. The only material supporting the allegations against the truck is that the co-driver had heard that the goods were of foreign origin. This is an ambiguous situation, as Nepalese ginger and third country goods are both foreign. Further, the co-driver would hardly qualify to be considered as an 'agent' of the owner of the truck. In the circumstances, we are unable to hold that the owner of the truck or his agent had knowingly transported offending goods.

Therefore, confiscation of the truck under Section 115(2) of the Customs Act was not justified. Appeal is, accordingly, allowed with consequential relief to the appellants.

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