Manohar Hingorani Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-13-1999

Reported in : (1999)(84)LC703Tri(Mum.)bai

Judge : J T J.H., J S Murthy

Appellant : Manohar Hingorani

Respondent : Cc

Judgement :

1. This is the party's appeal by name Shri Manohar Hingorani against the above captioned impugned order dated 20.11.1989/26.12.1989 praying for quashing the same, to the extent affecting him, and to set aside the penalty imposed upon him and for any other orders incidental or consequential to the above orders.

1.1. The facts of the case are that M/s. Ebrahim Karmali CHA No. 11/388 filed a shipping bill no. 520250 dated 14.4.1986 in the Custom House Export Department in the name of M/s. Tirupati International for export of 380 cartons declared to contain powerloom polyester filament fabrics (300 denier) 34200 pcs. each measuring 1.2 mtrs. weighing 12312 kg. of a declared value of Rs. 10,08,471/- FOB under duty free scheme as per appendix 21 of the Import and Export Policy, 1985-88. It was consigned to M/s. Hung To Trading Company Hong Kong vide invoice No. T1-01, dated 19.3.1986 and GR No. GE-576445 dated 30.3.1986. The exporters declared in the shipping bill that they would be claiming REP licence against the export covered by the said shipping bill as above and submitted REP declaration, DEEC declaration, Export declaration, Export Invoice and packing list in the letterhead of the exporters M/s. Tirupati International duly signed by the proprietor. It was processed in the export department of the Custom House on 14.4.1986 on the basis of the declaration and the examination order given by the duplicate copy of the shipping bill. The goods were carted inside the dock by clearing agent on 12.5.1986 and the shipping bill was presented to the Customs staff for examination of few packages by the Customs Dock staff on 13.5.1986 in the presence of Customs House Agent, 5 cases were found to contain old and used empty gunny bags as against the declared goods of powerloom polyester fabrics. The shipping bill was referred to the special investigation and Intelligence Branch of the Custom House for further investigation of the matter.

2. In the course of the investigation statements under Section 108 of the Custom Act of Shri Noor Mohammed, representative of CHA, Sanjiv M.Shetty were recorded on 13th and 11th May, 1986. The residential premises of the appellant searched under the search warrant issued by the Assistant Collector of Customs, SUB and six documents were seized under the panchnama. His statement was also recorded. The residential premises of Mario D' Souza in Kalina was searched under the search warrant. The appellant identified Shri Mario D' Souza in the presence of the panchas as a person who had brought 380 packages said to contain powerloom polyester packages at Hay Bunder on 12.5.1986 for export to Hongkong in the name of the exporter under the shipping bill no.

520250/14.4.1986. It was confirmed by the said Mario D' Souza. They seized code No. made by the exporter Shri Upendra Housing Society, Dahisar (E) and code No. allotment form issued by RBI having code No.B3-001234 dated 17.3.1986. Some old and used gunny bags similar to those found in the consignment were also seized in the residential premises of Mario D' Souza. His statement was recorded. From the further investigation, it was found that on 19.3.1986 he visited RBI for the purpose of obtaining code number, the copies of the document at Serial No. 1 to 5 the exporters application for allotment of code number by M/s. Tirupati International, its declaration dated 12.3.1986, its undertaking given to RBI and Indian Bank letter dated 13.3.1986, and the extract of the visitors register for the date 19.3.1986 showing the name and signature of the representative of the firm to whom GR form were issued. It disclosed that though the name of Mr. Iyer had been entered as a representative of Tirupati International, but the signature was not his, but of one Mr. Mario D' Souza. Statement of Shri Pradeep D. Mopkar Manager of Indian Bank, Juhu, and that of Arun Kumar Rasiklal Shah, partner of M/s. Suresh and Bros, and Shri Arvind Kotak were recorded on 5.6.1986 and 16.6.1986. On 16.5.1986 and 19.5.1986, 380 packages covered by the shipping bill were examined by the officers of SUB in the presence of the panchas and appellant and others, and it was found that 38 packages of 3268 pieces weighing 818.5 kg. and the remaining 342 packages contained old and used gunny bags burnt Iron lumps and iron scraps. The ascertained value of the polyester fabrics found in the consignment was Rs. 96,365 whereas the total declared value was Rs. 10,08,471.90. On verification it was found that the address of the exporting firm was fictitious and no such firm existed at the address as per the letter dated 30.5.1986 of Shri Ambal Mills P.Ltd. and statement of Shri Prabhakar Nambiar dated 22.5.1986.

3. From the above it is clear that the declaration made in the export invoice, in the shipping bill, and declaration pasted to the shipping bill are false in material particulars such as description and value.

The quality specification and description of the goods are not in conformity with the terms of the export contracts. They are deemed to be prohibited goods in terms of Clause 3(3) of the Export Control Order, 1977. M/s. Exporter TI Mumbai have adopted/employed corrupt or fraudulent practice in exporting the above said goods with a view to obtain import licence for import of duty free polyester yarn and thereby contravened Clause 14 of the Export Trade Control (Order), 1977. The goods did not correspond to the material particulars with the entry made in the Customs Act, 1962. So they are liable for confiscation under 113(d) read with Section 3(2) of the Imports and Export Control Act, 1947 and also under 113(i) of Customs Act. By adopting the above modus operandi the exporter has attempted to export not only less quantity of goods having less value, but have attempted to evade custom duty to the tune of Rs. 21 lakhs by attempting to fraudulently obtain the REP duty free licence corresponding to the value and weight of the exported goods of value of Rs. 10 lakhs as against the value of the goods being exported of only Rs. 96,000/-. The investigation disclosed that M/s. TI Exporter is a fictitious firm and Shri Krishna Swamy Iyer is an imaginary person, and Shri Mario D' Souza acted as such, and he is the proprietor of the fictitious firm, which had attempted to export old and used gunny bags of no commercial value by declaring the same as 100% polyester fabrics with a view to obtain import licence for import of polyester filament yarn free of customs duty of Rs. 21 lakhs. The appellant, Sanjeev M. Shetty, Arvind Kotak have aided and abetted Mario D' Souza in unauthorized export and consequential benefit accounting and resulting in loss of customs duty.

M/s. TI Exporter, Upendra Coop. Hsg. Soc. at flat no. 23, Y.T. Road, Dahisar (E), Mumbai-68 and Mario D' Souza, appellant, Sanjeev Shetty, Arvind Kotak have in relation to the subject goods mentioned above, covered by the shipping bill number as mentioned above, have done or omitted to do certain acts which have rendered the goods liable for confiscation. Show-cause Notice dated 30.11.1987 was issued to the above persons calling upon them to explain why the goods should not be confiscated and personal penalty should not be imposed on them under the provisions of the Customs Act referred above. No reply was received from the appellant. Notice was not served to M/s. TI and its proprietor, Arvind Kotak, and returned undelivered. Mario D' Souza and the appellant have reiterated the statement in the personal hearing held on 7.3.1988, 9.5.1989 and 24.5.1989. The appellant has added that he only attended for paper work to help Mario D' Souza for getting the goods exported and denied all the charges of the Show-cause Notice.

Mario D' Souza explained the case under the letter. The appellant has pleaded ignorance about the nature of the exported goods, and stated that he has acted in a professional manner, as a consultant, and he was only concerned in getting the goods exported on behalf of D' Souza.

Arvind Kotak has submitted his written reply. After going through the records, and hearing the parties, the impugned order was passed ordering absolute confiscation of polyester fabrics and empty gunny bags contained in 380 packages under Section 113(d) and 113(i) of the Customs Act read with Clause 3(3) of the Export Control Order, and imposed the personal penalty under 114 of the Custom

Act of Rs. 10 lakhs each on the appellant Mario D' Souza, Arvind Kotak, Sanjiv Shetty and consolidated penalty of Rs. 15 lakhs on M/s. TI represented by Krishna Swami Iyer. Hence this appeal.

4. Both the parties were heard. The appellant in person has urged in support of the grounds of appeal A to N in the appeal memorandum, and sought for dismissal of the appeal. Shri C.P. Rao, the learned SDR has strongly supported the impugned order, and has contended that the material available on record clearly substantiates the case against the appellant in the form of statements, seizure, and circumstances, and the corroborative evidence. The action of the appellant, made out in the case, exceeds the limit of his consultancy, of helping for the export of the goods. He has further urged that there are no sufficient and satisfactory grounds to set aside the impugned order. The point to be considered is whether the impugned order is liable to be set aside.

We answer it in the negative.

5. Perused the impugned order and the appeal memorandum. None of the other persons penalized in this case have come forward to challenge the impugned order. From the facts and circumstances of the case, it is seen that the persons who have given statement under Section 108 of the Customs Act have stood by it. None of them have retracted at any point of time. Under these circumstances, the statement under Section 108 of the Customs Act of the appellant and others, is a substantial evidence in support of the case. Apart from that, there is a search and seizure of the records from the residential premises of the appellant, which is also admitted and explained by him, which throws light about this transaction in this case. Added to it, the appellant, though served the Show-cause Notice, has not submitted any written reply denying the charges against him and making out a specific case, as now urged. On the other hand, in the personal hearing he has reiterated earlier statements. The appellant has not challenged any one of these things even now. So far as the goods involved is concerned, nobody has come forward to claim the valuable 100% polyester filament fabrics worth Rs. 96,000/-. The discussion in the impugned order in that regard is quite exhaustive and convincing to hold that there was a mis-declaration in the quality and value, and

the documents seized in this case shows that there was a well established attempt to attempt for export, waste scrap burnt iron lumps in the guise of polyester filament fabrics to avail the facility of duty free import by obtaining the REP licence in terms of the Import Policy against such exports. The statement and the various events brought out in the investigation clearly establishes that the persons concerned had used the small quantity 818.5 of polyester fabrics as a cover to the attempted illegal export. More than one person is involved in these events. Wrongful documentation and mis-declaration in large scale and mis-statement of facts are made for the attempted export. So the order of the confiscation of the said goods is just and proper.

6. Now coming to the personal liability of the appellant it is seen that Sanjiv Shetty who was attending to the clearance of the export cargo has spoken against the appellant that he was introduced as a representative of M/s. TI by one Arvind Kotak and the export documents were received by him from Manohar Hingorani i.e. the appellant, through Arvind, which he handed over to Mr. Noor Mohd. of Custom House Agent no. 11/338 for completing customs formalities. He has also specifically stated that the appellant handed over the consignment covered by the shipping bill in question at Hay Bunder for carting and completing shipment formalities. He has also given the telephone number and address. The statement of the appellant also implicates him in the event. The documents seized from his house were received by him from Mario D' Souza who approached him in March 1986 representing the export firm M/s. TI for advice to prepare export document and registration of contracts with export promotion council, for the export of polyester filament fabrics. Shri Arvind Kotak has given the copy of the shipping bill. His statement further discloses the waiting for the goods in Hay Bunder along with Sanjiv Shetty and Arvind Kotak to be brought by Mario D' Souza in two trucks, and he received them and gave to Sanjiv, who in turn gave it to Noor Mohd. the Custom House Agent. This material clearly shows the active involvement of the appellant in this transaction. Mario D' Souza in his statement has specifically stated against the appellant that he agreed to arrange for the export, which is not the job of a consultant. He has also further added that the programme chalked out by Krishna Swami Iyer to export 10% of the goods with correct declaration and 90% scrap materials by declaring the entire contents as 100% polyester fabrics

and the arrangement made by him with somebody in Hongkong to be a consignee, when discussed with the appellant and asked him for the arrangement of shipment, he promised to complete the formalities, and effect the shipment, if he was paid 121 1/2% of the declared export value. The appellant told him the shipment should be minimum value of Rs. 10 lakhs. So this statement of Mario D' Souza further amplifies that the role of the appellant is not of mere consultant but as a person deeply involved in this event namely the misdeclaring of the goods in quality. Statement of Arvind Kotak involves the appellant as a person introduced by his E.M. Joshi as a representative of M/s. TI. The 380 packages were examined in the presence of appellant and others and found to contain empty gunny bags burnt iron lumps in 342 packages and polyester fabrics 100% in 38 packages. So all these materials clearly supports the case of the department against the appellant as urged in the Show-cause Notice. The impugned order in page 14 to 17 deals with the case against the appellant. The defence of the appellant and the materials available on record are considered in detail and adjudicating authority has not accepted the case of the appellant. The discussion starts from the statement of Noor Mohd. the representative of CHA, and passes through the statement of Sanjiv Shetty, Arvind Kotak, and also the seizure and search of the premises of the appellant and the recovery of important documents connected with the transaction in original as well as copies, and also the application for allotment of code numbers. The contention of the appellant that he is only a consultant to help exporter, in this case is negatived by his own conduct of approaching Arvind Kotak, Sanjiv Shetty and the CHA for completing the exports. As rightly discussed in the impugned order, the role of the consultant is to advice the party regarding the procedure, but not to participate along with them in the course of the transaction. The circumstances and facts of the case clearly discloses that the appellant was in full know of the nature of the goods, and he was a witness to the examination of the said goods, which were found to be misdeclared both in quality and value. The statement of Mario D' Souza further shows the demand of commission by the appellant and fixing the minimum value of the goods for shipment to the tune of Rs. 10 lakhs. So all these things clearly establish that the appellant has participated in the entire transactions in all respects demanding commission and eventual benefit.

So under these circumstances, the grounds urged by the appellant in the appeal memorandum are not sufficient and satisfactory to set aside the impugned order, as the discussions in the above paras negatives the grounds taken by him. So under these circumstances, the point raised is answered in the negative. Hence we pass the following order: For the reasons discussed above the appeal cannot be allowed and it is dismissed.