**SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com**

**Sanjeev Arora Vs. Commissioner of Central Excise**

**Sanjeev Arora Vs. Commissioner of Central Excise**

**SooperKanoon Citation** : sooperkanoon.com/15697

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Apr-23-1999

**Reported in** : (1999)LC741Tri(Delhi)

**Appellant** : Sanjeev Arora

**Respondent** : Commissioner of Central Excise

**Judgement** :

1. In this case an amount of Rs. 8,65,098/- towards duty drawback has been fraudulently claimed by M/s. Star Time and M/s. Elekta Electronics on semi-conductor devices-power transistors and a penalty of Rs. 5 lakhs has been imposed on Shri Sanjeev Arora who is the proprietor of M/s. Star Time and a penalty of Rs. 50,000/- has been imposed on Sanjeev Arora as a partner of Elekta Electronics. Penalty of Rs. 1 lakh has been imposed upon Elekta Electronics Ltd. and Rs. 50,000/- has been imposed on Vikram Arora, another partner of Elekta Electronics.

2. The case of the Department is that M/s. Star Time and M/s. Elekta Electronics had fraudulently claimed duty draw back by exporting rejected/ cheap/junk/non-functional semi-conductor devices at an inflated price in the guise of semi-conductor devices viz. power transistors falling under Item No. 4724(C) and 4724(D) of the Drawback schedule. Statement of Sanjeev Arora was recorded on 18-7-1995 in which he admitted that since a large investment of Rs. 20 to 25 lakhs had to be made to fulfil the export orders by obtaining good quality power transistors, they had decided to purchase cheap and inferior quality transistors

from small shopkeepers in Lajpat Rai market, Delhi. They purchased 3,90,000 pieces of power transistors from such a shop for Rs. 90,000/- and exported the same to the consignees in Dubai. He also stated that no purchase bills were available with him in respect of the goods purchased by him. He admitted that the drawback claimed at @ Rs. 2.78 per piece was an excessive claim and a wrong one and hence they decided to refund the drawback claim of Rs. 7 lakhs in the Punjab National Bank, IGI Airport, New Delhi vide TR-6 challan dated 18-7-1995. Certain officers of the Department were examined and they stated that the goods were passed for export after visual examination and it was not possible to ascertain about either the quality or functionality of the semi-conductor devices. The Department also obtained opinion from the Department of Electronics who opined that it was not possible to identify a power transistor from other semi-conductor device by visual examination and that it was not possible to distinguish a non-functional power transistor from a functional one by this method only, and this could be ascertained by carrying out tests. Show cause notices were issued to all the parties concerned and after considering the explanation of the co-noticees, the Collector of Customs has held that the claim of drawback of the above mentioned amount resulted in excess and erroneous claim of duty drawback and since the amount has been repaid, he ordered appropriation of the same, and also held the concerned persons liable to penalty under Section 114, since the goods were liable to confiscation under Section 113 of the Customs Act.

3. We have heard Shri Handoo who submits inter alia that the request for cross-examination of officers of DRI and officers of the Customs which request was made in the reply to the show cause notice as well as in the written submissions and during personal hearing, was not allowed on the ground that no reasons had been set out by the appellants for seeking cross-examination. He submits that clear reasons have been given by the appellants in the reply to the show cause notice as well as in the written submissions dated 26-9-1997 viz. that the officers had coerced Shri Sanjeev Arora to make the submission and to deposit a sum of Rs. 7 lakhs. He, therefore, submits that it is factually incorrect on the part of the Adjudicating Authority that no reasons had been adduced by the appellants for seeking cross-examination of the officers in question. He also submits that the Department has relied upon a report obtained from one of the foreign buyers in

Dubai that he had not placed any order for semi-conductor device from M/s. Star Time and Elekta Electronics and had not received any such consignments from them and he asked for a copy of this report but the same has not been made available and the reliance upon such document is behind the back of the appellants. He submits that therefore, principles of natural Justice has been violated for the above reasons.

4. Learned DR draws our attention to the findings in the impugned order that there has been no retraction by Sanjeev Arora and it is two years after the retraction of his statement that he has complained that the statement was not voluntary which would show that the change of stand is only is an after-thought and it is a ploy to deliberately stall the proceedings. He submits that therefore, there is no illegality or infirmity in not allowing the cross-examination of officers as sought for by the appellants. He also takes us through the scheme of drawback and submits that in the absence of any evidence put forth by the appellants to show the actual price of the goods exported, the Department has rightly relied upon the statement of Sanjeev Arora to hold that the cheap quality of semi-conductor devices purchased @ 25 paise per piece have been exported and drawback claim for a much higher amount has been claimed by the appellants. He, therefore, contends that the prohibition contained in Section 76(1) of the Customs Act, 1962 is attracted in the present case. He prays that the impugned order may be upheld and the appeal dismissed.

5. We have carefully considered the submissions of both sides. From the reply dated 6-9-1997 to the show cause notice, it is clear that Sanjeev Arora had given reasons for seeking cross-examination of officers and the reasons are reiterated in the written submissions made on 26-9-1997. The reason as appears from these letters is that Sanjeev Arora was threatened by Shri A.K. Dingra and made to confess that the power transistors were of inferior quality and he promised to help him if he admitted the offence and deposited the duty drawback on his own.

The letter of 26-9-1997 also contains the request for cross-examination viz. forceful coercion by Shri A.K. Dingra and another officer.

Therefore, it appears that the finding of the Adjudicating Authority that no reasons had been set out by the appellants for seeking cross-examination is not factually correct and sufficient reasons have been set out in these two letters and, therefore, we are of the view that the cross-examination of these officers should not have been disallowed. We also find that the learned Counsel is correct in his submission that the report from one of the foreign buyers in Dubai has been relied upon by the Adjudicating Authority behind the back of the appellants. This has also resulted in contravention of the principles of natural Justice. We, therefore, set aside the impugned order on this ground alone and remand the matter to the Adjudicating Authority for decision afresh after extending the opportunity to the appellants to cross-examine the officers named by them in their letter dated 6-9-1997 and 26-9-1997, and supply a copy of the report obtained by the Department from M/s. Dubian Agency Ltd., Dubai to the appellant and pass fresh orders after extending an effective opportunity of being heard in person.

**SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com**