

Prakash Thawani Vs. Cc

Prakash Thawani Vs. Cc

SooperKanoon Citation : sooperkanoon.com/15885

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-20-1999

Reported in : (1999)(85)LC529Tri(Delhi)

Judge : J Balasundaram, S T G.R.

Appellant : Prakash Thawani

Respondent : Cc

Judgement :

1. The appeal arises out of the order of the Commissioner of Customs, New Delhi who has imposed a penalty of Rs. 20 lakhs under Section 112(a) and 112(b) of the Customs Act 1962 on the appellant herein, holding him to be the person who indented high value electronic consumer durables of foreign origin such as TVs, music systems, walkman, cordless telephone, speakers, video cassettes, etc., seized on 25.11.1994 from C-31, Lajpat Nagar III, New Delhi which is found to be in the possession and occupation of one Asabuddin, a driver in the Bangladesh High Commission, procured them from overseas company of which he was the Indian agent, and arranged their clearance, storage and subsequent sale in the local market in contravention of the provisions of Section 111(d), (i), (1) (m) and (o). The goods have been held to be "cover cargo" to conceal misdeclared items and items in excess of : those declared and the goods have been confiscated under a separate adjudication order for violation of the conditions of Notification 3/57-Cus. dated 8.12.1956 (sic) inasmuch as the imported goods were disposed of by importing diplomats in contravention of the Rules and in contravention of the

conditions of the above mentioned Notification as well as for contravention of the provisions of the Foreign Trade (Development and Regulation) Act, 1992.

2 We have heard Shri R.K. Handoo, learned Counsel and Shri Satnam Singh, learned SDR.3. At the outset, we note that there is no statement of the appellant in which he has admitted involvement in the alleged offence of import of goods in contravention of the Act and Rules. The entire case has been made out on the basis of the statement of one Alok Singh of M/s.

Service Bureau (Custom House Agent) recorded on 26.11.1994 and 29.11.1994. Shri Alok Singh has stated that the supporting documents such as duty exemption certificate etc., issued by the Ministry of External Affairs, delivery order and Bills of Entry duly signed by the Embassy's diplomat in respect of Bills of Entry at Sl. No. 1 to 8 (under which the offending goods had been cleared) were handed over to him for customs clearance by Shri Prakash Thawani and that the cargo cleared vide Bill of Entry at Sl. No. 1 to 6,8 and 10 was despatched to C/31, Lajpat Nagar III, New Delhi, as per Prakash Thawani's directions.

The appellant sought cross-examination of Alok Singh (who is the only person who has deposed against him) in his Counsel's letters dated 26.8.1995 and 24.5.1996 and this request has been noted by the adjudicating authority in para 52 (iv) of the impugned order; however, in para 54 of the adjudication order, the Commissioner has stated that the cross-examination of persons who had deposed against the appellant was not asked by his counsel. Therefore, the statement of Alok Singh which is the only link between the appellant and the confiscated goods remains untested by cross-examination.

4. We further find that none of the diplomats of the Royal Nepalese Embassy or Nigerian High Commission in whose names some of the packages were imported, have named the appellant as connected in any way with the import of the goods. There is no evidence on record to show that the appellant herein was the indenting agent for the offending goods.

Although he has been an indenting agent for several Embassies and High Commissions, that does not automatically lead to the conclusion that he was the

indenting agent in the present case also. He has also categorically denied all involvement with the goods in dispute. Further the gate passes under which the imported goods were delivered at C/31, Lajpat Nagar III, New Delhi have been signed, not by the appellant, but by Asabuddin, the driver of the Bangladesh High Commission who was occupying the above mentioned premises, or his wife Romana.

5. The statement of Jag Mohan Sethi, who is the landlord of premises at 10/64, Vikram Vihar, Lajpat Nagar IV, New Delhi (which is also one of the addresses on the gate passes for delivery of the imported goods) brings out that he had rented out the portion of his ground floor to Mr. Abul Hassan, (alias Asabuddin) a staff member of the Bangladesh High Commission, that the electronic goods were being found stored in those premises for the past 4 years, and that on the IAAI gate passes, the residential address was that of these premises, and the goods in the name of Nigerian High Commission and Bangladesh High Commission were acknowledged by Romana, wife of Abdul Hassan, and that he recognised Prakash Thawani as the person whom he had seen once or twice with Abul Hassan at his premises, on being shown photograph of Prakash Thawani, is also not sufficient for holding that the appellant was concerned with the storage of the goods at 10/64, Vikram Vihar, Lajpat Nagar IV. Further the statement of Jagmohan Sethi has not been relied upon in the show cause notice and hence cannot be pressed into service in the adjudication order. The other statement relied upon is that of Mahendra K. Tahilayani. He has stated that Prakash Thawani was running a firm in the name and style of M/s. Andrews International at II.K./12B, Lajpat Nagar III, New Delhi and that after detection of this case, Prakash Thawani was not available in the above premises. He has not stated that M/s. Andrews International was the Indian representative of M/s. Sartaj Electronics, Dubai or that M/s. Sartaj Electronics belonged to Prakash Thawani's brother or that Andrew & Co.

Ltd., Hongkong, belonged to Prakash Thawani's brother. Therefore, the findings of the Commissioner that M/s. Andrews International which was run by the appellant herein, represented the overseas firm of Sartaj Electronics, Dubai and that Sartaj Electronics and M/s. Andrews & Co., Hongkong belonged to the appellant's

brother is not borne out by Mahendra Tahilayani's statement. There is t also no evidence to support the finding that M/s. Sartaj Electronics and M/s. Andrews & Co., Hongkong are the overseas companies which have supplied the goods forming the subject matter of the present case. We also find that penal action initiated on the basis of the same evidence as available in this case has been dropped in adjudication order No. 16/KK/96 and 17/KK/96 dated 4.7.1996 relating to goods imported in the name of Mr. Mauricio, an Attache in the Philippines Embassy, New Delhi and in the name of Dinesh Bhattarai, First Secretary of Royal Nepalese Embassy, New Delhi.

Therefore, the evidence on record is not sufficient to establish the involvement of the appellant in indenting the goods, procuring them from overseas companies and arranging their clearance, storage and subsequent sale in local market in contravention of the law and that, consequentially, he is liable to penalty. We extend the benefit of doubt to the appellant and set aside the penalty imposed upon him.

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