

Nirmala Rishi Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-28-1999

Reported in : (1999)LC948Tri(Delhi)

Appellant : Nirmala Rishi

Respondent : Commissioner of Customs

Judgement :

1. These appeals are directed against a common order. Therefore, they are disposed of by this common order. The impugned order confiscated a consignment of cellular phones under Section 111(m) of the Customs Act, 1962 for under-declaring the value of the goods in the customs documents. Simultaneously, it imposed the following penalties under Section 112(a) of the Customs Act:-(1) M/s. Virat Electronics

Rs. 15 lakhs (the importer)(2) Shri J.C. Rishi (Managing

Rs. 12.5 lakhs Director of the importer)(3) Ms. Anita Batla (Director ...

Rs. 12.5 lakhs of the importing company)(4) Mrs. Nirmala Rishi (Director of ...

Rs. 5 lakhs the importing company)(5) M/s. Venus Agencies ...

Rs. 50,000.00 lakhs (Clearing Agent) 2. Arguing the appeals of the importing company and its Directors, learned Counsel, Shri Madho Rao submits that the valuation adopted by the Customs Authorities is not being challenged as the value

has been adopted based on the correct amount paid for the goods. He, therefore, limits his arguments to the penalties. He submits that while the penalties are excessive, the penalties imposed on Mrs. Nirmala Rishi in particular is too harsh and unwarranted as she is not involved in running of the company or in the import in question. She had been asked by the clearing agent, when the Managing Director of the importing company was abroad, to get the invoices authenticated from the bank.

She attended to this work in an effort to ensure clearance of the goods, not knowing that the invoices did not represent correct value of the goods or that an offence punishable under the Customs Act, 1962 was being committed. He also submitted that Dr. Rishi, Managing Director of the importing company was not in India at the time of the filing of the wrong papers for the clearance of the goods. Ms. Anita Batla also, who happened to be in India in connection with a bereavement signed the papers without being fully aware of the contents.

3. Arguing the appeal for the Clearing Agent, learned Counsel, Shri L.P. Asthana submits that the evidence on record does not in any way justify imposition of penalty on him. He had only filed the Bill of Entry in accordance with the invoice and other documents handed over to him by the importer. The learned Commissioner has drawn wrong inferences from the documents in question and has imposed penalty on him. The evidence relied upon against him is that the Airway Bill had mentioned the Letter of Credit opened by Bank of Tokyo and in spite of that he filed the invoices handed over to him. Further, an invoice for Singapore dollar 405 per piece of cellular phone was recovered from the importer's premises and the same was in an envelope of the Clearing Agent, leading to the presumption that this invoice had been prepared by the agent with the intention to file with the Customs. Shri Asthana submitted that these presumptions are entirely wrong. The Airway Bill did not indicate the value of the consignments and in the absence of that information, the agent had no reason to suspect that the invoice filed from the Singapore supplier was incorrect. The invoice for Singapore dollar 405 was recovered from the premises of the importer and no evidence has come on record to show that it had been prepared by the agent or it was intended to be used to under-invoice the goods and to evade Customs duty. In the

circumstances, he submitted that the penalty on the Clearing Agent was entirely unjustified as he was only performing his duties as an agent in assisting the importer to clear the goods from the Customs.

4. Heard Shri Prabhat Kumar, learned SDR, for the Revenue. He pointed out that the evidence on record made it clear beyond any doubt that the under-invoicing of the goods was deliberate and is the result of a carefully planned and executed fraud. He in particular pointed out that the Singapore supplier, M/s. Venus Electronics International Ltd., was closely connected to and controlled by the Indian importer as Dr. Rishi was the owner of the Singapore supplier firm and the Managing Director of the importing company in India. Further, the fraud was masterminded by Dr. Rishi. He had negotiated and finalised the import with the manufacturer, M/s. Ericsson of Sweden, had arranged to suppress the invoice of M/s. Ericsson and had routed the supply through his own firm in Singapore under false documents. It is also clear from the statement of Ms. Anita Batla that she had been handling the work of the Singapore supplier and had prepared the false invoices and other papers for the imported goods. The invoice and other papers presented to the Customs were also prepared and signed by her. Thus, she played a vital role in the misdeclaration of value of imports. With reference to the role of Mrs. Nirmala Rishi, Shri Prabhat Kumar pointed out that she was a Director of the importing company and it is on record that the false invoices for the clearance of the goods were got attested by her and Ms. Batla from the Bank of Baroda. This clearly shows that she is involved in the running of the company as well as took an active part in the under-declaration of value to the Customs Authorities. The learned SDR, therefore, submitted that the under-invoicing was the result of a carefully pre-planned conspiracy and the parties and the persons all had a common intention to defraud the Revenue. With regard to the role of the Clearing Agent, he submitted that the Clearing Agent had a duty under the Customs House Agents Regulation to check and to ensure that proper Customs documents are filed and also to inform the Customs Authorities in case papers made available to him were incorrect or false. In the instant case, he had taken an active part and had colluded in the offence, inasmuch as in spite of knowing that Bank of Tokyo had opened the LC, he had accepted papers which had been attested by the Bank of Baroda and he had also given undertaking to Bank of

Tokyo. Shri Prabhat Kumar submitted that in view of the gravity of the offence involved and the evidence on record which brings out the role played by each of the persons, there was no justification for showing any leniency to any of the parties.

5. We have perused the records of the case and have considered the submissions made by both the sides. The facts of the case are that the appellants had purchased the cellular phones at a price of US \$ 610 per piece; the supply was directly from the Swedish manufacturer, Ericsson; they had paid at the rate of US \$ 610 through Letter of Credit on Bank of Tokyo; all the same, the documentation was routed through Managing Director's distribution firm at Singapore; false invoice declaring the value at Singapore \$ 610 per cellular phone was issued by the Singapore firm; such false invoices were presented by the person managing the Singapore firm duly certified as true before the Indian Customs Authorities to get the goods assessed at the lower value and these false invoices were got attested by the Bank of Baroda which had no concern with the payment. We find that the under-invoicing of the consignments itself remains established and admitted. Therefore, confiscation of the goods was fully justified. With regard to the penalties imposed, we find that the evidence on record clearly brings out the fraudulent intention of the parties concerned and the false documents prepared and presented by them to evade customs duty. The supplier at Singapore and the importer in India are closely related parties, inasmuch as the supplier at Singapore is owned by the Managing Director of the Indian importer. False invoices have been deliberately prepared and filed before the Customs even as a much higher value was paid for the goods. The false invoices presented to the Customs were also got attested from Bank of Baroda deliberately to convince the Customs Authorities about the authenticity of the false invoice presented before them. Each of the persons on whom penalty has been imposed has also played a very active role in the fraud. The Managing Director of the firm had finalised the import and was fully-aware of the actual price of the goods. All the same, he had ensured that false documents are prepared and filed to evade Customs duty. Ms. Anita Batla attended to the preparation of the false documents on behalf of the supplier as well as in filing those papers before the Indian Customs.

Mrs. Nirmala Rishi also has played an active role in facilitating the clearance of the goods by personally visiting Bank of Baroda and obtaining attestation from the Bank Manager, evidently by making false representation. Thus it is clear from the evidence that the importing company and the other persons punished with penalties had clearly violated the law knowingly and the punishments were entirely justified.

The under-declaration of the value would have led to evasion of Customs duty of over Rs. 51 lakhs. The value of the goods itself was over Rs. 2 crores. The statute allows imposition of penalty not exceeding five times the value of the offending goods. Taking into account the gravity of the offence, the value of the goods involved and the duty which would have been evaded if the fraud had not been detected, we have no doubt that the penalties imposed cannot be considered excessive or unwarranted. Accordingly, we confirm the penalties imposed on the importing company, Dr. Rishi, Ms. Anita Batla and Mrs. Nirmala Rishi.

We also do not consider the redemption fine to be excessive or in need of any reduction.

6. With regard to the penalty on the Clearing Agent, we find that he was basically acting as the agent of the importer and was in that capacity performing his normal function of facilitating Customs clearance. The papers filed by him including the offending invoices had been handed over to him by Ms. Batla and she has herself admitted the same in her statement. The invoice for Singapore dollar 405, though purportedly prepared by him, had not been presented to the customs or used for committing any fraud. Nor has any evidence come on record to show that this has been prepared by the agent on behalf of the importer. He had also not presented the false invoices after they had been attested by Bank of Baroda. Further, though the Airway Bill showed that L.C. had been opened by Bank of Tokyo, its value was not indicated on the Airway Bill. He had, therefore, no knowledge about the actual value. Thus, we are of the opinion that he deserves benefit of doubt in the matter and his role in advancing the offence has not been proved.

In the circumstances, we accept his appeal and set aside the penalty imposed on him. Subject to this modification, the impugned order is confirmed.

