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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-10-2000

Reported in : (2001)(127)ELT133Tri(Mum.)bai

Appellant : S.S. Bindra

Respondent : Commissioner of Customs

Judgement :

1. These three appeals are against the common order of the Collector (Appeals) confirming the order of the Additional Collector of Customs, imposing penalties of Rs. 50,000/- on S.S. Bindra and Ashwin Mehta and a penalty of Rs 1.00 lac on Abubakar S. Kapadia under Section 112 of the Act.

2. We have heard the advocates appearing for Bindra and Kapadia. Mehta is absent and unrepresented despite notice to him. We have read the memorandum of his appeal and we have also heard the departmental representative.

3. The penalties have been imposed following the findings of the Additional Collector that a consignment of polyester fabrics which was imported duty free under the advance licence and Notification 117/78 was sold contrary to the provisions imposed by law, in the market, instead of being utilised for the manufacture of the final product to be exported.

4. The basis for imposition of penalty upon Kapadia is that Farid Abdul Gani and Hemant Kawathekar who were transporting two packages containing polyester

textile, which formed part of the imported consignments said, on being questioned by the Customs officials, that they were taking them for delivery to Sapna Saree Centre, at Manish Market which is owned by this appellant. It is the contention of the advocate for this appellant that he and his son Anjum are partners. The representative points to the statement of Farid Kapadia another son of the appellant also a partner. He used to sit in the shop. Even assuming that the latter is true, the statements of Kapadia and Kawathekar that the goods were intended to be taken to the shop are not by themselves sufficient to say that this appellant was involved. If, as it appears, Salim who was named by Kawathekar as the intended recipient of the goods, did some time sit in the shop, it is very possible that the goods were meant for him as Kawathekar says. There is in short nothing specific to implicate this appellant with regard to these goods.

5. The position is not so clear with regard to Bindra. Heavy reliance is placed in the order on the statement of R.C. Sharma, the partner of Ritu Exports, the importer of the goods. The fact that Bindra provides Rs. 14.00 lacs to the firm for executing the bank guarantee before the licensing authority for obtaining the advance licence for import is itself not an illegal activity for one to arouse suspicion. What constitutes evidence against this appellant is the further statement of R.C. Sharma that Bindra phoned him around the time of seizure asking him to stay away from home for the reason that the goods have been seized upon. This is certainly suspicious. However, we are of the view that this piece of evidence alone is insufficient to come to the finding that Bindra has, along with others decided to import the fabrics with the sole object of selling it in the market. That seems to be the thrust of the Collector (Appeals)' finding. The penalty imposed on Bindra is not under Clause (b) but Clause (a) of Section 112 of the Act. He has been penalised in short for importing the goods. Now, import of the goods was not illegal. This import was made in pursuance of the advance licence issued. It was the act of not utilising the goods for the purpose for which they were permitted to be imported and disposing of them illegally that has rendered them liable to confiscation. The Additional Collector has rightly invoked the provision of Clause (o) of Section 111 of the Act. There is nothing in the order that the import was made in pursuance of a plan or a conspiracy to sell the goods. No such specific allegation was made against him. Nor is it possible to infer such an allegation in

what the Additional Collector says. The statement of R.C. Sharma and K.L. Sood and Atmanant Agarwal do not say that the import licence was obtained by Bindra with an intention to misuse it. These facts, in our view, are insufficient to justify imposition of penalty on Bindra.

6. Penalty has been imposed on Mehta for being actively concerned with the disposal of the goods. Atmanant Agarwal, in his statement, says that he and his employer Ashwin Electromat India Pvt. Ltd., which form a partnership, named Deepak Enterprises, that the object of disposing of the imported goods in the market. This statement is not controverted by Mehta. The fact that the 24 other persons did not indicate Mehta is irrelevant in this regard. The contention that it was an afterthought on the part of Agarwal is again not acceptable. Agarwal while implicating Mehta has also implicated himself. The Supreme Court's judgment in C.C. v. Naresh J. Sukhwani - 1996 (83) E.L.T. 258 would aptly apply him. We therefore confirm the penalty imposed on him.