Commissioner of Customs Vs. Jac Enterprises

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-27-2000

Reported in : (2001)(129)ELT179Tri(Mum.)bai

Appellant : Commissioner of Customs

Respondent : Jac Enterprises

Judgement :

1. M/s. Jac Enterprises, (Jac for short) the respondent to this appeal filed by the Commissioner, was a customs house agent licensed under the Customs Agent Licensing Regulations, 1984. In June 1983 the Customs House officers posted at the Air Cargo Complex at Sahar detected an attempt to smuggle out 150 kilograms of mandrax, a prohibited psychotropic substance, concealed between the walls of two filing cabinets which were being exported to Malawi. Investigations conducted by the department showed the involvement in the attempted export of Ashok M. Boge and Vittal Uttekar who were customs clerks of Jac Enterprises. The exporter on record of the filing cabinets was M/s.

Eastern Enterprises, and the shipping bill had been filed by it. After its initial processing, prior to the examination of the cabinets, Ankur Mhashilkar, who was pursuing the clearance through customs of the cabinets, asked Borge and Uttekar to take charge of the clearance.

Accordingly, Uttekar crossed out from the shipping bill the word 'Self used to denote that there was no customs house agent and wrote on it the name of Jac

Enterprises. Borge attended to the examination of the goods.

2. These facts having disclosed to the department the involvement on the part of Jac in the export of the goods, its licence was suspended and notice was issued to it under the Licensing Regulations proposing cancellation of its licence. Five articles of charges were enumerated in the notice. On the denial of all the charges by Jac Enterprises, an officer was appointed to enquire into them, as provided in the Regulations. After conducting his enquiry, the officer submitted his report to the Commissioner. He exonerated Jac of four out of five charges. He found the remaining charge to have been established. The Commissioner, after considering the submissions of Jac, held in the order, which is impugned before us, that the fifth charge had not been established and concluded that no action was called for. He therefore revoked the suspension, restored the licence. The Commissioner challenges this order.

3. The charge which the enquiry officer found sustainable, and which the Commissioner has not accepted to be so, alleges that Jac contravened the provision of Sub-regulation (7) of Regulation 20 by failing to exercise necessary supervision over the working of its staff who handled the clearance work relating to the export of the filing cabinets. The enquiry officer has said that while it is understandable that the shipping bill was accepted on 23-6-1993 (by the employees of Jac) the fact of such acceptance should have been brought to the notice of Lalit Jobanputra, the proprietor of the firm, the same day or the next day. The contention on behalf of Jobanputra was that he only came to know about the fact that his employees were concerned with the clearance of the cabinets when the customs officers in the course of their enquiry summoned him on the night of 26th June. The Commissioner had noted that Borge and Uttekar had confessed to the officers that they took up the job without Jobanputra's knowledge and they did not keep him informed about their participation in it, and that Bhavesh Sanchatre, a supervisory employee of the firm, had also confirmed the ignorance of the Jobanputra.

4. The ground in the department's appeal against this finding is that normally no employee would accept such a work without the approval of the proprietor; it goes

on to say even if the contrary is the case, the customs house agent is still liable under Sub-regulation (7) of Regulation 20. It would, generally, be correct to say that no employee of a customs house agent would accept any work without his superior's permission. We are, however, concerned with the export of an illegal substance, carrying with it the risk of high penalties and correspondingly high monetary gain. In such a situation, an employee, whether of a customs house agent or of shipping company or a Government agency may well be tempted to take up such a job for his personal gain and keep his superiors in the dark. There is no evidence to counter the Commissioner's finding. This finding, in fact, echoes the finding of the Commissioner of Customs, Sahar, who, adjudicating upon the notice issued to the exporter and to Jac under the Customs Act, 1962 in regard to the attempted export, has exonerated Jac of any involvement in the attempt. The department has not challenged the correctness of this order.

5. Sub-Regulation (7) of Regulation 20 provides that a customs house agent shall exercise such supervision as may be necessary to ensure the proper conduct of any such employees in the business as agent and that he will be responsible for acts, omissions of his employees in regard to their employment. These last five words that we have emphasised are significant. They show that the object of the Sub-regulation is to ensure that the customs house agent will be responsible for all acts or omissions of his employees, in the course of their employment as such employees. Clearly, the customs house agent is not responsible for the acts of his employees in their private capacity. He cannot be held responsible for criminal acts committed by an employee in his personal capacity, or for his domestic misbehaviour. The question to be answered, therefore, is, whether Ashok Borge and Vittal Uttekar carried out their activities as employees of Jac, or in their personal capacity.

6. There is not the slightest suggestion that Jobanputra gave permission, in writing or orally, to these employees for taking up the job. There is no evidence to show that was in any way aware of their involvement in the attempted export of filing cabinets. His claim, that he first became aware of the involvement of the employees when the customs officers told him of this, is not disputed. It is thus evident that they carried out the job on their own and without the consent or

knowledge of their employer. Their acts were not in the course of their employment. Sub-regulation (7) of Regulation 20 will not therefore apply.

7. The appeal further contends that the Commissioner was in error in accepting the finding of the enquiry officer on the article of charge that the customs house agent dealt with a non-existent firm. We need not go into the details of whether the firm existed or not. We have already held that the customs house agent did not have any dealing with the exporter; whatever dealings were they were by Ashok and Vittal in their personal capacity. This ground therefore fails.

8. There is a third ground that the respondent is a 'regular offender'.

This does not arise out of the order of the Commissioner or the notice issued to the respondent. This was not a reason proposed for cancellation of the licence. Therefore, it cannot be considered.