Pac Systems Pvt. Ltd. and ors. Vs. Commissioner of Customs

Pac Systems Pvt. Ltd. and ors. Vs. Commissioner of Customs

SooperKanoon Citation : sooperkanoon.com/20530

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-22-2001

Reported in : (2001)(75)ECC798

Judge : J T J.H., G Srinivasan

Appellant : Pac Systems Pvt. Ltd. and ors.

Respondent : Commissioner of Customs

Judgement :

1. This batch of appeal relates to and arises out of single order passed by the Commissioner of Customs-II Bombay. These appeals are therefore being disposed of together vide this common order.

2. M/s. Pac Systems (P) Ltd. manufactured computers. M/s. Pac Computers were a trading company marketing computers including those manufactured by M/s. Pac Systems. Smt. Radhakrishna Kumari, her husband Shri P.Venketa Narayan and his brother Shri Laxmi Narayan were the directors of these two private limited companies, M/s. B.M. Thakkar & Co. Ltd. and M/s. Ponds India Ltd. are the appellants who had purchased certain computers manufactured by M/s. Pac Systems, although from other dealers. These seven appeals are against this common order.

M/s. Pac Systems are located in Hyderabad and have a manufacturing facility in Mumbai. During March 1991 to September 1991 they had imported 18 consignments by parcel post. These had been cleared through the Customs at Bombay, and had been delivered to the appellant M/s. Pac Systems by the postal authorities in Hyderabad. No Customs duty was paid by the recipients because no duty was demanded. The DRI officers caused inquiries to be made at Hyderabad as to the 4 parcels imported by the appellant M/s. Pac Systems in Hyderabad. One parcel was examined on 3.10.91. The declaration said "Rever Skiff 3S". The national value declared was Hong Kong $ 4000. This was seized at the Airport Sorting Office at Mumbai. The statements of the concerned persons were recorded. Each one admitted to having received post parcels without payment of duty. Shri Laxmi Narayana in his statements claimed that the two of the parcels contained Laptop computers. Smt. Radhakrishna Kumari in her statement claimed to have imported Laptop cabinet with built-in Keyboard as well as full computers. These imports were received both at Bombay and at Hyderabad. At a later stage she made the clear statement that the goods imported were cabinet with keyboard and not fully made Laptop computers. She give details of the computers sold by them. As regards the item seized from the Airport Sorting Office, she cleared admitted it to be a fully manufactured Laptop computer. She admitted that the declaration was signed by her husband showing the value to be Hongkong $ 4000. In her statement she repeatedly claimed that her husband would know about the facts. However, his statements were not recorded. Statements of the officers and staff of the companies were also recorded which do not disclose any relevant material. The officers seized Laptop computers from several buyers, which were sold to them by the appellants. The statements of concerned persons are also not relevant to the offences committed by the present appellants.

4. At the end of investigation the show cause notice was issued alleging that Laptop computers in fully assembled conditions were imported and cleared without payment of duty when the then prevant Import Policy required coverage of a specific licence for computers falling under Appendix 2 Part 'B' of the Import Policy. It was claimed that the valuation declared was wrong and that the goods were liable to confiscation under Section 111(m) of the Act in addition to Section 111(d) of the Act. Allegations as to levy of penalty were made on the present appellants as well as other buyers. They were also asked as to why the goods should not be confiscated.

5. In the impugned order the 16 Laptop computers were confiscated but were allowed to be redeemed on payment of fines and on payment of appropriate duty. Similar orders were made in regard two computers seized from the Airport and the residence of Smt. Radhakrishanan Kumari. Penalty of Rs. 6 lakhs each was imposed on the limited companies and Rs. 3 lakhs on each of the directors. Hence the appeals.

6. We have heard Shri A.S. Sundarajan for M/s. Pac Systems, M/s. Pac Computers and their Director:. M/s. Ponds India Ltd. were represented [by] Shri Arun Mehta. Nobody appeared for M/s. B.M. Thakkar & Co. The Revenue was represented by Shri B.K. Choubey.

7. Shri A.S. Sundarajan argued on merits. He also raised two preliminary objections. His first objection was on jurisdiction. His claim was that the show cause notice issued by the DRI Bombay was without jurisdiction. The claim made by him before the adjudicating Commissioner was that the goods were imported and cleared through Hyderabad Foreign Post Office. Therefore the power to adjudicate this case would vest in the Customs Officer holding territorial jurisdiction over Hyderabad and that the Collector of Customs Bombay could not adjudicate this case. The Commissioner in his order observed that the clearance was made at the postal appraising department of the Customs House, Mumbai that there was no Foreign Post Office at Hyderabad and therefore the judicial authority would be the Collector of Customs Bombay. We observe that where the goods are cleared at the Foreign Post Office, Bombay, the assessment would be done by the Bombay Custom House irrespective of the place where the recepient persons is located. We do not find anything wrong in the justification made by the adjudicating Commissioner as to jurisdiction. Shri A.S. Sunder Rajan relied heavily upon the Supreme Court judgment in the case of Union of India v. Ram Narain Bishwanath held that the proper authorities for adjudication were those where the goods were imported and cleared. The judgment in fact supports the Commissioner's finding. We do not find merit in the first objection.

8. The second preliminary objection raised by Shri Sunder Rajan is very grave. It is his submission that the adjudicating authority had passed this order without

hearing him. The show cause notice was issued on 23.2.92. There is a letter on file dated 11.9.92 addressed to the adjudicating Collector by Shri A.S. Sunder Rajan summarizing the various arguments made by him at the time of the personal hearing in this case on that very date. Subsequently, it appears that the Commissioner of Customs who had heard this case, was transferred and Shri S.K. Bharadwaj, the officer who passed the impugned order, succeeded him. There is a letter on record dated 7.12.93 from Shri Sunder Rajan referring to another hearing fixed on 17.12.93 and seeking adjournment on the ground of his pre-occupation. The impugned order was passed on 18.2.91. In paragraph 35 of his order, the Collector recorded that Shri Sunder Rajan had appeared for personal hearing. He summarised his statements in paragraph 35 to 36. He thereafter proceeded to deal with the points allegedly made.

9. Shri Sunder Rajan makes the statement (which forms part of the grounds of the appeal also) that he had never appeared before the adjudicating authority namely Shri S K. Bhardwaj. It is his claim that Shri S.K. Bharadwaj had passed this order without hearing him and in the face of a request for adjournment. The dates set out by us above would support this arguments. We are not inclined to disbelieve the statement made by the Counsel at the bar. Shri B.K. Choubey also very fairly does not contest this statement.

10. In departmental adjudication the principles of natural justice hold sway. The principles are few and simple. The allegations have to be made known to the alleged offender. His side of the story has to be heard by the adjudicator and thereafter an unbiased judgment has to be passed. Where a particular officer has heard a notice and has not passed any order, then his successor has to once again call the alleged offender for another hearing. Where on receipt of such communication the notice submits that the next adjudicating officer could make his opinion on the basis of the documents on record and the record of earlier hearing, then alone he can proceed to decide the case. But where the personal hearing is desired, then the adjudicator has not option but to hearing afresh even in the face of the likelihood that the points earlier made would be reiterated.

11. We observe that in the summary of arguments dated 11.9.92 referred to above, Shri Sunder Rajan had gone on record claiming that the adjudicating authority, who had heard him was prejudiced against his clients. In such a situation it was appropriate for an adjudicator not to proceed with the case and the statement makes in all the more necessary for the succeeding adjudicating officer to hear the notices afresh.

12. The very basic principle of natural justice that no judgment should be made without hearing the other side was violated by the Ld.

Commissioner who adjudicated the case. The manner in which paragraphs 35 to 37 are drafted give the impression that Shri Sunder Rajan had appeared before the present adjudicating officer. In view of the very specific protest made in the appeal papers and before us also, we have to hold that Shri Sunder Rajan was not heard on behalf of his clients by the present adjudicating authority thus rendering this order bad in law.

13. On behalf of M/s. Ponds India Ltd. it is the statement of Shri Arun Mehta that the liability thrust upon his clients is the direct result of the finding of the adjudicating authority that the goods supplied to his clients by M/s. Pac Computers etc. were imported in violation of the provisions of the Import Trade Control Act. It is his submission that this issue will have to be first re-examined and the culpability of the manufacturing company established. Any adverse inferences could be drawn against his client thereafter only. It is also his submission that M/s. Ponds India Ltd. had not purchased computers through M/s. Pac Computers but through M/s. Dynamic Computer Chennai. We find substance in the claim made by Shri Arun Mehta, 14. In the result the appeals filed by the two Private Limited Companies and their Directors are allowed on the ground of the impugned order having suffered from the violation of principles of natural justice. The appeal filed by M/s. Ponds India Ltd. is allowed as it is a related appeal. All these matters are remanded to the jurisdictional Commissioner of Customs. He shall give adequate opportunity to all these appellants to be heard He shall maintain a contemporaneous record of the hearing before him. The appellant are free to make appropriate submissions before the Commissioner.