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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-09-2001

Reported in : (2001)(137)ELT368TriDel

Appellant : Neresh Chawla

Respondent : Cce, Jaipur

Judgement :

1. The brief facts of the case are that the officers of the DRI, Regional Unit, Jaipur intercepted a truck near Behror on 9.12.98 at 2300 hrs. On enquiry, Shri Narinder Kumar, Driver of the truck stated that the truck was loaded with Haldi powder. On search of the truck on 10.12.98, the DRI officers recovered 80 bags containing 2000 Kgs of Tatracycline powder valued at Rs. 30 lakhs and 175 bags containing 30500 Nos video cassettes (Panasonic brand) valued at Rs. 42,70,000/- Consequently the goods collectively valued at Rs. 72,70,000/- were seized alongwith the truck bearing registration No. RJ-27G-4433 valued at Rs. 3 lakhs. Shri Narinder Kumar, Driver in his statement recorded on 10.12.98 deposed that he was working as driver with M/s Auto Road carrier having its Head Quarter at Delhi. He stated that he reached Udaipur on 7.12.98 alongwith his wife and a friend Ashok Kumar. He parked his truck at the Godown of M/s Auto Road carriers, Udaipur. He stated that Shri Naresh Chawla looking after the work of Udaipur Branch of the transporter told him that a consignment from another truck was to be taken to Delhi. Therefore, he left that place to go to the place of his inlaws and (the deponent) on return at 8.00 A.M. on 8.12.98, he found the truck

loaded. Subsequently Shri Chawla handed over the documents to the Khalasi of the truck and was told that truck was loaded with Haldi powder to be delivered at Delhi. He deposed that till the interception of the truck by the DRI officers, he had no knowledge that the goods loaded in the truck were the smuggled goods. The statement of Shri Ram Avtar, Khalasi of the truck was recorded on 11.12.98. The statement of Shri Prabhu Dayal Agarwal owner of the Auto Road Carrier, Delhi was also recorded on 11.12.98 who deposed that the truck belonged to Shri Naresh Chawla and he was merely a delivery agent of the Company at Udaipur and that he had no knowledge about the consignor and the consignee of the goods. The same deposition was made by Shri Parveen Kumar, Clerk of M/s Auto Road Carrier, Delhi in his statement of 12.12.98. The statement of Shri Naresh Chawla was recorded on 15.12.98 in which he deposed that he was a booking agent with M/s Auto Road Carrier in Udaipur. He stated that one Mahinder Singh, Driver on 7.12.98 at 7.30 P.M. gave him a telephonic call to the fact that he as going to Delhi from Hyderabad with 204 bags of Haldi powder loaded in his truck which developed some fault and he requested to arrange for the transhipment of the goods. He stated that he arranged this to truck No. RJ-27G-4433 in the night. He also instructed Narender Kumar, Driver of the truck to park the truck at Dhaulakuan after arrival at Delhi where the consignee himself will contact him. He stated that the truck was owned by him. On further investigation it was revealed that consignor of these goods M/s Laxmi Enterprises Hyderabad, was found to be a non-existent and the freight letter issued by them was also a fake one. Consequently, the proceedings were initiated. The 30500 Nos video cassettes and 200 Kgs Oxytetracycline powder was misdeclared in transport documents as Haldi powder and infact these goods were smuggled from Nepal in contravention of the prohibition imposed by Notification No. 9/96 dated 22.1.96 issued under Section 11 of the Customs Act, 1962. It also appeared from the markings on the video cassettes that they were made in Japan. No one came forward to claim the ownership of the goods. Consequently, a show cause notice dt 31.5.99 was issued alleging that the goods were liable for confiscation under Section 111(d) of Customs Act, 1962 and the truck was liable for confiscation under 115(2) of the Act. Further, the stated Shri Naresh Chawla, Narinder Kumar, Ram Awtar and Mahinder Singh were liable to penal action under section 112. Only Shri Naresh

Chawla, owner of the truck replied to the show cause notice. He submitted that he was not the owner of the contraband goods seized from his truck. He stated that he only agreed to transport the goods on payment of Rs. 8000/- freight.

These proceedings culminated in the Commissioner of Customs, Jaipur passing an Order dated 5.6.2000 in which he ordered for absolute confiscation of seized goods. He further ordered for the confiscation of truck No. RK-27G-4433 under Section 115(2) as truck was being used for carrying the smuggled goods with the knowledge of its owner Shri Naresh Chawla. He however, gave an option to the owner to redeem the same on payment of a fine of Rs. 50,000/-. He further imposed a personal penalty of Rs. 50,000/- on Shri Naresh Chawla under Section 112(b) of the customs Act, 1962. However, the Commissioner dropped the proceedings initiated against the other notice parties.

2. The present appeal is by Shri Naresh Chawla against above order of Commissioner of Customs. The appellant is not represented. He has sent a letter dated 2.11.2000 in which he has stated that it is not possible for him to appear either in person or through authorised representative and therefore his appeal may be decided on merits.

3. I have heard Shri A.K. Jain, JDR for the respondents. The appellant in his written memo of appeal has stated that he had no knowledge of contraband goods meant for transport from Udaipur to Delhi. He has further stated that as per his knowledge, Haldi powder was loaded in the truck. He states that he was booking agent of M/s Auto Road Carriers. Shri A.K. Jain JDR for the respondents contended that the contraband nature of goods loaded in the truck subject matter of confiscation, is not in dispute. He states that Naresh Chawla was aware of the contents of the goods for the reason that as against 204 bags shown in the G.R. issued in respect of the truck from which the goods were transhiped, 255 bags were loaded in the truck of the appellant. If initially only a consignment of 204 bags was carried, how they became 255 bags? This is not explained by Shri Naresh Chawla. Further the appellant had taken the freight charges from Udaipur to Delhi only for 204 bags and not for 255 bags. Consequently the Commissioner in his order has rightly observed that it was not an ordinary transhipment and the

appellants were aware of the goods. Further, Narinder Kumar, Driver of the truck in his statement dated 10.12.98 has deposed that he had told the appellant about the discrepancy in the numbers of packets to which Naresh Chawla told him that it was none of his concern. It is therefore, contended that confiscation of the truck and the imposition of penalty on the appellant is liable to be upheld.4. I have considered the submissions made me. As already stated above, the contraband nature of goods is not contested. It is observed that in terms of provisions of Section 115 (2) of the Customs Act, 1962 any conveyance used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation unless the owner of the conveyance proves that it was so used without knowledge or connivance of the owner himself, his agent or the person in charge of the conveyance. In the present case admittedly the appellant himself ordered for the transhipment of the smuggled goods from one truck to another. There is no explanation forthcoming from him as to the discrepancy in the transport documents as against the actual number of bags in the consignment as analysed by the adjudicating authority. In view of this therefore, I am of the view that the appellant has not been able to discharge the onus case in the aforesaid provisions of the Act that smuggled goods were being transported without his knowledge. In view of this fact, therefore, I find no discrepancy in the Commissioner ordering for the confiscation of the truck and imposition of penalty on the appellant. A fine of Rs. 50,000/- in lieu of confiscation of the truck valued at Rs. 3 lakhs is also not excessive. The appellant in his appeal has stated that he has already taken the release of the truck on payment of the stated fine.

In view of the facts of the present case, therefore, the penalty is reduced to Rs. 25,000/-(Rupees twenty five thousand only).

5. But for the above modification, the order passed by the lower authority is up-held rejecting the appeal of the party.