

M/S Jayabharat Credit Ltd. Vs. Commissioner of Customs, Lucknow

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-20-2001

Reported in : (2001)(131)ELT467TriDel

Appellant : M/S Jayabharat Credit Ltd.

Respondent : Commissioner of Customs, Lucknow

Judgement :

1. The Officers of DRI, Lucknow intercepted a truck bearing Registration No.GJ-9-V-0395 on the Bansi-Naugarh Road near the Indo-Nepal border on 22.11.98. On search of that truck, a total of 13,320 pcs. of Taper Roller Bearings (Made in Romania) valued at Rs.13,98,600/- were recovered from it. These bearings and the truck valued at Rs.5,00,000/- were seized under Section 110 of the Customs Act, 1962. From the documents recovered from the seized truck, it revealed that the owner of the truck was one Shri Lalit Kumar N Rajdeo, r/o. 17, Panch Jyoti Society, Murasa, Gujarat. Shri Lalit Kumar N Rajdeo sent an unsigned letter to the Asst. Director of DRI, Lucknow along with a copy of the sale agreement purported to have been entered into by him with one Shri Aziz-ur-Rehman, owner of M/s. New Nelco Transport Service, Mumbai for the sale of truck to Shri Aziz-ur-Rehman, Village and Post Office: Pasai Dist. Siddharthnagar, U.P.2. Shri Aziz-ur-Rehman submitted an affidavit dt. 3.5.99 to the Asst.

Director, DRI, Lucknow stating that the said truck was being operated by one Shri Nihal Ahmed of P.S. Dindhara Dist. Sant Kabir Nagar on mutual agreement and on payment of a sum of Rs.10,000/- per month to Shri Aziz-ur-Rehman by Shri

Nihal Ahmed.

3. Consequently, a show cause notice dt.13.5.99 was issued by the Commissioner, Customs, Lucknow to S/Shri Lalit Kumar N Rajdeo, Aziz-ur-Rehman and Nihal Ahmed of M/s. Jaybharat Credit Ltd. asking them to show cause why seized roller bearings should not be confiscated under Section 111(d) of the Customs Act, 1962, why the aforesaid truck should not be confiscated under Section 115(2) and why a penalty should not be imposed upon each one of them under Section 112(b).

4. The above proceedings culminated in Commissioner, Customs, Lucknow passing an order dt. 6.3.2000, in which, he ordered for absolute confiscation of 13,320 pcs. of roller bearings of foreign origin under Section 111(d) of the Customs Act, 1962. He further held that the aforesaid truck was liable for confiscation under Section 115(2) of the Customs Act, 1962. He has however, observed that the said truck had already been disposed of by the Department and therefore, he would order for the recovery of Rs.1 lakh as redemption fine in lieu of confiscation of the said truck from the sale proceeds of the truck. He has directed that the balance if any should be refunded to the owner of the truck and if there is any dispute regarding the ownership of the truck, it can be settled by them before claiming the refund of the balance of the sale proceeds.

5. M/s. Jaybharat Credit Co., have filed the present appeal against the above order of the Commissioner. Shri Shashi Bahadur, Advocate appearing for the appellants submits that the appellants are the lawful owners of the said truck. It is submitted that the said vehicle was purchased from M/s. Bafna Motors for total consideration of Rs.4,78,612/- on behalf of one Shri Lalit Kumar N. Rajdeo. In pursuance thereafter, the appellants and Shri Lalit Kumar N. Rajdeo executed a hire purchase agreement dt. 10.9.96 and M/s. Real Delux Transport Company who stood as guarantors for the re-payment of the said amount advanced to Shri Lalit Kumar N. Rajdeo. Shri Lalit Kumar N. Rajdeo agreed to pay the sum of Rs. 5,92,000/- in equal monthly instalments of Rs. 16,910/-. These parties made payment of 53,970/- to the appellants.

It is stated that in terms of hire purchase agreement since the hire purchasers failed and neglected their liability of the sum agreed upon by them to be paid to the appellants, the ownership of the vehicle would rest with them (the appellants) and therefore in terms of the order of the Commissioner, the balance of the sale proceeds of the said truck often appropriating the sum of Rs.1 lakh as redemption fine, should be paid to them.

6. I have considered the submissions made before me. As already stated, the impugned truck has been ordered by the Commissioner in his order to be confiscated. It is also stated that the truck has been already disposed of by the Department. The Commissioner has ordered for the recovery of Rs.1 lakh as redemption fine in lieu of confiscation and the balance amount to be refunded to the owner of the truck or the representative of the truck. Shri M.D. Singh, SDR appearing for the Revenue submitted that the Collector has intimated that the truck has been sold in auction for a sum of Rs.2,76,111/-. Consequently, the owner in terms of the order of the Commissioner is entitled to be paid a sum of Rs. 1,76,111/-. Shri Shashi Bahadur, Advocate for the appellants, M/s. Jayabharat Credit Ltd. submits that in view of the judgement of the Hon'ble Supreme Court in the case of M/s. Ganga Hire Purchase Pvt. Ltd. vs. State of Punjab [2000 (121) E.L.T. 9 (S,C)], they are not contesting either the confiscation of the alleged contraband goods loaded on the truck or the confiscation of the truck.

He, however, states that in terms of the proviso to Section 115 (2) of the Customs Act, 1962, they are the owners of the truck and they should be given the aforesaid balance of the amount as directed by the Commissioner in his order. I find force in these submissions. The Commissioner in his order has observed that he cannot sit in judgement over the legal issue of ownership of the truck which is beyond the Customs Act and to decide as to whether the truck should be handedover to M/s. Jayabharat Credit Ltd. on account of non-payment of instalments to Shri Aziz-ur-Rehman or to Shri Lalit Kumar N Rajdeo. He has observed that the Customs Department is not the authority to decide the issue and that could be settled only in a Court of Law after examination of the facts in the matter as per law on the subject. It is observed that in terms of the provision of Section 115 (2) of the Customs Act, 1962, the Commissioner has ordered for

confiscation of the truck and fixed a fine of Rs.1 lakh in lieu of confiscation under these provisions.

Therefore, since the Commissioner as an adjudicating authority has ordered for the confiscation of the vehicle, he cannot escape from his responsibility to determine the ownership of the vehicle and to whom the vehicle is liable to be handed over on payment of a fine on redemption. In this case, the Commissioner has already ordered for a fine of Rs.1 lakh to be appropriated from the sale proceeds of the truck and balance amount to be refunded to the owner of the truck. It is also submitted by the Departmental side that a sum of Rs.2,76,111.00 has been realised from the sale proceeds of the truck. Therefore, in terms of his own order, the Commissioner should determine the ownership of the truck and make over the aforesaid balance amount to him.

Consequently, the observations of the Commissioner in his order on Pages 13 and 14 of his order under consideration in relation to the ownership of the truck are set aside and the matter is remanded to him for determining the same in view of the facts and the law on the subject before him. After determining such ownership he should give the balance amount to the owner.

7. The appeal is thus allowed by remand in the above terms. The claimants should be afforded a reasonable opportunity of hearing before taking a final view in the matter. The case shall be decided by the Commissioner within three months of the receipt of this order.

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