

Krishan Kumar Sharma Vs. Commissioner of Customs, Lucknow

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-28-2001

Reported in : (2001)(132)ELT312TriDel

Appellant : Krishan Kumar Sharma

Respondent : Commissioner of Customs, Lucknow

Judgement :

1. Appellant filed this appeal against the order passed by the Commissioner of Customs whereby his Truck No. HR-29/C-6077 was confiscated under Section 115 of the Customs Act, 1962 and the option was given to the appellant to redeem the truck on payment of redemption fine of Rs. 1 lakh. The personal penalty of Rs. 1 lakh was also imposed under Section 112(b) of the Customs Act, 1962 on the appellant.

2. The brief facts of the case are that on 25.6.98, the officers of Customs apprehended a truck No. HR-29/C-6077 which was parked near Katra forest barrier, Railway Crossing. On search of the truck various cartons (SIC) third country (SIC) were found of the value of Rs. 14,67,800/-. Shri Harender Kumar Singh, Cleaner of the truck was present on the spot could not produce any legal document in respect of the import of the goods. The goods were taken into possession. Shri Harender Kumar Singh, in his statement under Section 108 of Customs act, 1962 submits that the third country origin goods were loaded in the truck in the presence of the owner of the truck (present appellant) and Shri Shashi. he also submits that the goods in question were brought from Nepal without any

import documents, and were kept concealed at Siliguri in the Godown of Western Carrier, S.F. Road, Siliguri and the appellant Shri Shashi instructed the driver of the truck, unload the goods at Laxmi Transport at Ghaziabad. A show cause notice was issued to the appellant for confiscation of the truck imposing penalty. Thereafter, the adjudicating authority passed the impugned order.

3. Learned Counsel appearing on behalf of the appellant submit that appellant has no concern with the goods in question, the truck was attached to M/s. Laxmi Transport Company and the driver and Cleaner were appointed by M/s. Laxmi Transport Company. As the truck was under the control of M/s. Laxmi Transport Company, the appellant cannot be penalised for any act or omission on the part of M/s. Laxmi Transport Company.

4. He further submits in his statements that the Cleaner of the truck, only referred the appellant as 'Prince'. His submission is that mere mentioning 'Prince' by the Cleaner, without any corroborative evidence, the impugned order is not sustainable. He, further submits that the goods in question are neither notified under the provisions of Section of the Customs Act, 1962 nor under Chapter IV A of the Act and are freely importable. Therefore, onus is on the Revenue to show that the goods are of smuggled nature. For this, he relies upon the decision of the Tribunal in the case of Ashoke Shamooi Vs. Commissioner of Customs (Prev.) Calcutta, reported in 2000 (116) E.L.T. 503 (Tribunal). He therefore, submits that the appeal be allowed.

5. Learned SDR appearing on behalf of the Revenue submits that the Cleaner of the truck in his first statement, made before the Customs Officers, specifically mentioned that goods were brought from Nepal illegally, kept concealed at Godown at Siliguri and the goods were loaded in the truck which is owned by the appellant, in the presence of the owner of the truck and Shri Shashi. Therefore, he submits that in his first statement, the Cleaner of the truck named the appellant and admitted the fact that the goods were loaded in his supervision.

Regarding the nature of the goods, he submits that the Cleaner of the truck specifically mentioned that the goods were brought from Nepal and kept concealed at a Godown at Siliguri. He, therefore, submits that the appeal be

dismissed.

7. In this case, the Cleaner of the truck Shri Harender Kumar Singh in his statement under Section 108 of the customs Act, 1962, at the time of recovery of the goods, specifically mentioned that the goods were brought from Nepal illegally and are kept concealed in a Godown in Siliguri and the goods were loaded in the truck in the presence of the owner of the truck (present appellant). As the Cleaner of the truck specifically mentioned that the goods were loaded in the presence of present appellant who is the owner of the truck, I find no merit in the submissions made by the appellant that he was not named by the Cleaner in his statement. In respect of the nature of the goods, as the Cleaner specifically mentioned that the goods were smuggled from Nepal and kept concealed to show the legal import of the goods in question. In view of the above discussions, I find no merit in the appeal, the same is rejected.

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