

Collector of Central Excise Vs. Sahni Saree Emporium

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-14-1986

Reported in : (1986)LC295Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Sahni Saree Emporium

Judgement :

1. This appeal is directed against the Order-in-Appeal No. 771-CH/83 dated 24.9.83 (30.9.83), passed by the Collector of Customs (Appeals) New Delhi setting aside the order-in-original No. 7/Cus/83 dt. 5.4.83, passed by the Assistant Collector, Central Excise, Jullundur in C. No.VIII (10)/I/83/AO/3316-21.

2. Brief facts of the case so far as relevant for the purpose of this appeal are that as a result of the search of the business premises of the appellant on 6.1.83 textile fabrics in 38 pieces (124 metres) of foreign origin valued at Rs. 4,825/- were recovered and the same were seized under the provisions of Import (Control) Order No. 17 of 1955 read with Section 11 of the Customs Act. As a follow up action, show cause notice was issued to the appellant asking them to show cause as to why the seized textile fabrics be not confiscated and also why penalty be not imposed upon them. After the usual enquiry, the Adjudicating Authority confiscated the seized textile fabrics with an option to redeem the seized goods on payment of redemption fine of Rs. 3,500/- and also imposed a personal penalty of Rs. 6,000/- under Sections 111 & 112 of the Customs Act respectively. It was the defence of the appellant that the business of the appellant's firm is known for embroidery and

tailoring work specialist and cleaning of textile fabrics. It was submitted that 29 pieces were received from the customers for stitching/embroidery under proper vouchers. Regarding the rest of the 9 pieces, it was the defence of the appellants that these 9 pieces include some pieces of Indian origin and were brought on payment of duty for personal use and were brought at the shop for stitching/embroidery purposes. The Adjudicating Authority rejected the defence of the appellants being an after-thought holding, inter alia, that had the appellant received the 29 pieces from the customers under proper vouchers as claimed, the appellants would have produced the voucher book at the time of seizure. As regards the 9 pieces he rejected the claim on the ground that the description mentioned in the Baggage Receipt does not tally with the seized goods. As such the defence of importing them on payment of duty cannot be believed.

Alternatively, the Adjudicating Authority also held that even if the appellant's plea is accepted for arguments sake, no benefit can be given as the goods were recovered from the business premises and the conditions under which the goods are allowed to be imported stand violated. The plea that some pieces were of Indian origin was not accepted on being compared with the other seized goods. On appeal, the Collector of Customs (Appeals) set aside the order passed by the Adjudicating Authority and allowed the appeal in toto. For allowing the appeal he had come out very heavily on the department and found a number of defects and loop-holes in the investigation. To wit, he found fault with the Panchnama as it does not disclose that the officers made any efforts to seize books of accounts or voucher book. The Collector (Appeals) held that since the Investigating Authority failed to seize the books of accounts and the voucher book on the spot, the defence of the appellant cannot be brushed aside by holding that the vouchers so produced during the course of adjudication proceedings were prepared after the seizure. The Collector (Appeals) further held that the failure to seize the records was dangerous to revenue interest in that it gave a chance to the persons to manipulate the record. To quote his own words; "In the present case, their failure to seize the record, is clear evidence of a failure in investigation process. Such a failure was dangerous to revenue interest, in that it gave scope to the persons concerned to manipulate the records. Even if they did not manipulate the records, the investigation was biased in the sense that the only opportunity that the firm

had to establish the licit character of the possession was defeated by the officers not taking possession of the records and drawing a statement from one of the partners without reference to any records." On merits the Collector (Appeals) held that the statement said to have been recorded on the spot not state where it was recorded and at what time it was recorded and no further investigation to find out whether the appellant had other records was directed. Even subsequent statement of Shri Tajinder Singh Sahni partner of the firm was not recorded under Section 108 of the Customs Act which would have thrown light on 'the matter. As regards the Baggage Receipt, the Collector (Appeals) held that the description given in the Baggage Receipt namely, textile, is sufficient in general to cover the goods stated to be relatable to them.

3. Smt. Nisha Chaturvedi Ld. SDR who appeared on behalf of the appellant heavily contended before me that the criticism of the Investigating Agency by the Collector of Customs (Appeals) was uncalled for. She further submitted that the observations of the Collector (Appeals) that the investigation was biased is not tenable and the alleged infirmities pointed out by the Collector (Appeals) in investigation were not of such a character as to throw-out the case of the department. In reply Shri Tajinder Singh, a partner of the appellant's firm justified the order-in-appeal.

4. After hearing both the parties and perusing the record, I find that the infirmities pointed out by the Collector (Appeals) in the investigation are borne-out out by the record. However, to say that the investigation was biased because it failed to seize books of accounts or voucher books would be too much. Apart from the infirmities pointed out in investigation, the Collector (Appeals) has also agreed with the defence of the appellant that a part of the goods seized was covered by the Baggage Receipt and, therefore, no offence is made out. Regarding the rest of the textile goods, it appears that the Collector (Appeals) also agreed with the defence of the appellant that the same were covered under proper vouchers. The Ld. SDR could not point out any perversity in the findings of the Collector (Appeals). It is settled law that when two views are possible, the Appellate Authority should not lightly interfere with the order of acquittal unless unerring and cogent evidence is produced to draw a converse conclusion. After going through the evidence on

record and appreciating it in right perspective, I am of the view that the findings of the Collector (Appeals) on merits cannot said to be perverse or off the record so as to call for any interference by this Tribunal.

5. In the light of the foregoing discussions, I see no merit in the appeal and the same is accordingly dismissed.

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