

Rnc Freight Movers and ors. Vs. Cc, (icd)

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-11-2002

Reported in : (2002)(105)LC688Tri(Delhi)

Judge : S Kang, a T V.K.

Appellant : Rnc Freight Movers and ors.

Respondent : Cc, (icd)

Judgement :

1. In these six Appeals, arising out of two impugned Orders, both passed by the Commissioner of Customs, the facts involved are inter-related and as such all the appeals are being disposed of by one single Order.

2.1. Briefly stated the facts are that M/s. Bajaj Machine Tools filed four shipping bills all dated 21.10.1995 under claim of Drawback for export of High Speed Steel (HSS) TOOLS. On the basis of specific information that Bajaj Machine Tools were claiming drawback by exporting 'cheap cast iron drills' by misdeclaring the same as 'HSS tools', the DRI Officers detained one container at Mumbai Port which was found on examination to contain metal drills. The second container which had already been shipped to Dubai on 2.1.1995, was received back from Dubai at Mumbai on 26.11.1995 and was found to contain metal drill. M/s. Geo Chem Lab, after analysis of the samples, opined that the samples were of cast iron. The Officers searched the business premises of M/s. Chatrath International, Customs House Agent, and recovered photocopies of four shipping bills (S/Bs) and

connected documents. Shri G.S. Chatrath, proprietor, deposed in his statement dated 13.1.1995 that M/s. RNC Freight Movers were looking after CHA work of export on behalf of his firm and one Shri Vareen Sharma of RNC Freight Movers was authorized to sign the documents on his firm's behalf. Export documents of M/s. Bajaj Machine Tools were also recovered from the premises of RNC Freight Movers. Efforts to locate Bajaj Machine Tools at Chandigarh revealed that the address was a mail message service address and one of the address given to mail service was the address of RNC Freight Movers.

2.2. The Commissioner of Customs under first impugned Order No. 61/99 dated 21.10.1999 confiscated the consignments with an option to redeem the same on payment of fine of Rs. 10 lakhs and imposed penalty of Rs. 2.5 lakhs on Bajaj Machine Tools, Rs. 5 lakhs on RNC Freight Movers, Rs. 5 lakhs on Narinder Singh, Rs. 2.5 lakhs each on Vareen Sharma and Naveen Sharma and Rs. 25,000/- on M/s. Chatrath International. Hence the appeals filed by RNC Freight Movers, Shri Vareen Sharma and Shri Naveen Sharma. The appeal filed by Shri Narinder Singh against penalty has been decided by the Tribunal by reducing the same to Rs. 1 lakh vide Final Order No. A/26/2001/NB dated 4.1.2001.

2.3. It was also revealed during the investigation that Bajaj Machine Tools had already exported one more consignment under S/B No. 5810 dated 14.8.1995 to Dubai through M/s. Dynamic Travel & Cargo P. Ltd., clearing agent. One Narinder Singh had approached the clearing agent for export of HSS Tools by Bajaj Machine Tools. An amount of Rs. 10,77,930/- was claimed as drawback. The cheque was collected by one Arjun Arora who handed over cheque to Vareen Sharma of RNC Freight Movers. The cheque was deposited in the bank account of Bajaj Machine Tools with Union Bank of India (UBI). The Account was introduced by Naveen Sharma of RNC Freight Movers. Enquires also revealed with the Bank officials that Bajaj Machine Tools had not exported any consignment of HSS tools through them.

2.4. The Commissioner of Customs under second impugned Order No. 62/99 dated 29.10.1999 held that Narender Singh, Naveen Sharma and Vareen Sharma were the real persons behind Bajaj Machine Tools and planned to share the profit

equally among themselves and had taken the advantage of drawback amount. The Adjudicating Authority, therefore, held them liable to repay the entire drawback amount jointly and severally. Hence the appeals filed by Narender Singh, Vareen Sharma and Navin Sharma.

3. Shri Jitendra Singh, learned Advocate, appearing on behalf of M/s.

RNC Freight Movers, Vareen Sharma and Navin Sharma, submitted that the Appellant firm did not hold any CHA licence but was acting through other CHA; that during the course of their business operations, they came in contact with one Shri Narender Singh, owner of M/s. Godly India, Ludhiana which was engaged in the manufacture and export of H.S.S. Tools; that they were clearing Narender Singh's consignments for export; that samples were drawn and tested and at no point of time Department objected to such exports; that Narender Singh introduced one Ashok Kumar of Bajaj Machine Tools of Navin Sharma; that an impression was given that Ashok Kumar was very good friend of Narender Singh and had plans to export HSS Tools manufactured by M/s. Godly India in a big way; that Narender Singh gave mandate to the partner of the Appellant that they shall be acting as the agent of Bajaj Machine Tools and should therefore lend office address for helping his friend for speedy processing of the drawback claims; that in this background Ashok Kumar was introduced by the partner of Appellant firm to their Banks. He, further, submitted that all the necessary procedures were followed by them while handling the 4 shipping bills; that the sample was drawn by the Customs Officers; that only after proper examination, evaluation and testing the goods, the same were allowed to be exported by the officers; that Vareen Sharma complied with all the formalities relating to export of goods in good faith and discharged his responsibility as an authorized agent of CHA Chatrath International. The learned Advocate also contended that no effective opportunity to defend the case was afforded to them as copies of documents supplied were not legible; that they had also requested for inspection of certain original documents under their letter dated 6.6.1996; that after a gap of more than 2 years they were told by the Department under letter dated 13.11.1998 to contact specific officers of DRI for inspection of records; that the hearing fixed on 20.7.1999 was sought to be adjourned by them as the documents were still not made available to them; that

they filed their preliminary reply dated 26.7.1999 in which it was submitted that all the impugned consignments were received from the factory of Godly India. Ludhiana which was evident from the GR Receipt issued by the Transport; that G.R. Receipt can be further verified from the CRN Slip (CONCOR) which goes to show that the goods were received from Godly India; that their request to cross examine Narender Singh, owner of Single Roadways, concerned clerk of Container Corporation of India and Manager of Megabyte Business & Communication Centre, Chandigarh was not allowed; that they were neither granted any opportunity of cross examination nor was granted fresh hearing or time; to file final reply after grant of an opportunity to inspect the relied upon documents. The learned Advocate also contended that it was necessary for the Department to further investigate as who was Ashok Kumar whose photograph was available in the application for opening of Bank Account; who was Rajender Kumar who used to pick messages from Selz Communication for Bajaj Machine Tools; who was the supplier of the goods, from which factory the goods were loaded and through whom the goods were transported.

4. The learned Advocate, further, maintained that the Appellant firm had in past exported HSS Tools for Narinder Singh; that as those goods were never subject matter of any investigation, there was no occasion for partner of the firm to doubt the transaction on behalf of Narender's friend for shipping the same goods; that there is nothing in the Statement of the Partner to suggest that he knew about the true nature of the goods; that no reasonable prudent man would have introduced the conspirator to his bankers, sign the deposit slip of the drawback cheque, get the money withdrawn through his employees, file shipping bill themselves, leave evidence of involvement at every step of export; that on the other hand Narinder Singh cheated and played a fraud both on the Revenue and on the Appellants as he had exported similar consignment through other CHA and got Ashok Bajaj introduced to them. He finally submitted that there is no evidence to show that the real persons behind Bajaj Machine Tools were the partners of the Appellant Firm and, therefore, such finding in the impugned Order is baseless and only a presumption and assumption which deserves to be quashed; that in any case separate penalties cannot be imposed on partners as they are not different from the firm. He relied upon the decision in the case of *V. Esakia Pillai v. C.C.*,

Chennai 2001 (138) ELT 802 (T) wherein the penalty on CHA was set aside as there was no evidence to show that he had knowledge or information that the contents of bags were different from those described in the Shipping Bill.

Reliance has also been placed on the decision in *Chatturbhuj Overseas Agency v. Commissioner of Customs(T) and P.S. Bedi & Co. v. C.C.*, New Delhi 5. Arguing Appeal against Adjudication Order No. 62/99 (Appeal Nos.

C/27-28/2000-NB), the learned Advocate submitted that the goods involved in these matters were not available for examination which is even recorded by the adjudicating Authority in Para 39 of the impugned Order; that accordingly there is no evidence to support the charge of mis-declaration of goods; that the Revenue cannot ask them to return the drawback amount as there is no evidence that the money of drawback flowed back as share of profit to them. Shri S. Malhotra, learned Advocate appearing on behalf of Narinder Singh, submitted that Shri Narinder Singh has been falsely implicated as he had neither applied for the drawback amount nor had he withdrawn the same; that the goods in question were not exported by him; that had he been in any way connected with Ashok Kumar, he would have introduced him to Bank for opening the bank account instead of asking somebody else; that he has been named by co-accused merely because they had the knowledge that he was engaged in the export of same nature of goods.

6. Countering the arguments, Shri V.K. Verma, learned D.R., submitted that Bajaj Machine Tools in whose name impugned goods were being exported could not be located at the address given by Ashok; that the address was a mail message service address and the registration form available with Selz Communication contained 3 addresses out of which two addresses were found to be non-existent and the third address pertained to M/s. RNC Freight Movers and telephone number pertained to Vareen Sharma; that the bank Account was opened by Bajaj Machine Tools on the introduction of Vareen Sharma; that the drawback cheque was collected from the Department and deposited in the said Bank Account by the Appellant firm; that the money was withdrawn by them; that Naveen Sharma, in his statement dated 21.5.1996 deposed that it was agreed to share the profit amongst

the three person, namely, Narinder Singh, Ashok Kumar and Naveen Sharma; that all the event goes to show very clearly that all the Appellants had planned to defraud the Government by exporting wrong goods and claim drawback which was to be shared between them. He, further, submitted that there was no violation of principals of natural justice; that the Department had not relied upon the statements of the persons whose cross examination was sought by the Appellants; that sufficient opportunities to defend their case had been afforded to them. He also mentioned that the Tribunal already vide Final Order No. A/26/2001/NB dated 4.1.2001 has held that "Shri Narinder Singh was an instrument, at each stage right from getting an order of opening account and creating firm for export and getting the matter through drawback etc." and upheld the penalty of Rs. 1 lakh against him. The learned D.R. reiterated the findings of the Commissioner that all the Appellants are the real person behind Bajaj Machine Tools and mis-declaration of goods. Regarding Appeal Nos.

C/27-28/2000-NB, the learned D.R. submitted that the goods in those matters after reaching the destination, had not been cleared by the consignee; that there is no credit entry in the bank account of the exporter with Union Bank of India; that inward remittance for the export was not received; that goods were supposed to be put up for auction at Dubai; that in view of all these facts, the drawback amount is recoverable having been paid erroneously and as the Appellants were the real persons behind Bajaj Machine Tools they have been rightly held liable to pay jointly and severally the entire drawback amount.

7. We have considered the submissions of all the sides. The picture that emerges is that Narinder Singh of Godly India exported consignment of HSS tools through Appellant Firm though they were not CHA licence holder. Therefore, Bajaj Machine Tools was floated which had no address and no existence and for the purpose of communication address was given of a 'mail message service' belonging to one M/s. Selz Communication and the only correct address and telephone number given to Selz Communication were that of RNC Freight Movers and of Vareen Shanna, Appellants. The goods declared to be HSS Tools have been found to be of cast iron and as such the goods were misdeclared. No evidence to rebut the finding that the goods were misdeclared and were of cast

iron has been brought on record by the Appellants. We find no substance in the submissions of the Appellant firm and its partners that as CHA they have discharged their liabilities. The material evidence brought on record by the Revenue goes to prove that Bajaj Machine Tools was a facade for exporting the goods by misdeclaring the content and availing of drawback amount from the Revenue. We also do not find any force in the plea that the principles of natural justice were violated in not allowing cross examination of Narinder Singh as he is a co-accused and Department had not relied on any testimony of Singla Roadways, Clerk of Container Corporation of India and Manager of Megabyte Business & Communication Centre. If the Appellants wanted to adduce them in their defence, they could have brought them for examination and filed their affidavits. It has not been denied by the Appellants No. 1 to 3 that the Bajaj Machine Tools was introduced by them to the Bankers for opening the Bank Account and in respect of a consignment which was not exported through them, they collected the drawback cheque, deposited the same in Bank and withdrew the money. This all goes to show their involvement in the scheme to defraud the Government of the money by way of claiming drawback and exporting goods after misdeclaring the same.

The penalty thus under Section 112 of the Customs Act is imposable on them. The decisions relied upon by them are not applicable as the facts are different inasmuch as all the facts of introducing the bank account, collecting drawback cheque etc., were absent in these matters.

Shri Naveen Sharma has also deposed in his statement clearly that the profit of Bajaj Machine Tools would be equally distributed among Narinder Singh Ashok and he himself. Penalty is imposable on M/s. RNC Freight Movers as well as on both Partners namely Naveen Sharma & Varen Sharma under Section 114 of the Customs Act as the action taken by them had rendered the goods liable for confiscation. Mere fact that both Varen & Naveen are partners in RNC Freight Movers which has been penalized separately will not make any difference as it is not a proprietary firm. However, in view of the Final Order No. A/26/2001-NB dated 4.1.2001 under which Penalty imposed on Narinder Singh was reduced, we reduced the quantum of Penalty as under:(i) M/s. RNC Freight Movers Rs. 1 lakh(ii) Shri Varen Sharma Rs. 50,000/-(iii) Shri Naveen Sharma Rs. 50,000/- 8.

As far as Appeal number 34/2000-NB filed by Narinder Singh and Appeal numbers 27-28/2000-NB filed by Vareen and Naveen Sharma are concerned we observe that there is no rebuttal by any of the Appellants of the findings contained in the Adjudication Order No. 62/99 and submissions made by the learned DR that no remittance has been received in respect of the consignment sent to Dubai and in respect of which drawback has been obtained. It has not been denied by Vareen Sharma and Naveen Sharma that drawback cheque was collected and deposited by them through their employees and they withdrew the money from the Bank. Rule 16A of the Customs & Central Excise Duties of Drawback Rules provides that where an amount of drawback has been paid to an exporter or a person authorized by him but the sale proceeds in respect of such export goods have not been realized, such drawback shall be recovered and if the exporter fails to repay the amount it shall be recovered in the manner laid down in Rule 16 *ibid*. In the present matter thus amount is realizable from all the three Appellants as has been found that Narinder Singh was an instrument in creating firm for export and Naveen Sharma and Vareen Sharma got the drawback cheque. Accordingly all these three appeals filed by them are rejected.

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