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SooperKanoon Citation : sooperkanoon.com/28718

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-16-2002

Judge : S T Gowri

Appellant : Benadict

Respondent : Commissioner of Customs

Judgement :
1. The appeal is against the order of the Commissioner ordering confiscation of 188 kilograms of oxytetracycline under Clause (d) and (m) of Section 111 of the Customs Act, 1962 and of 24128 litres of base oil and 160 drums in which it was contained under Sections 118 and 119 of the Act, and imposing a penalty of Rs. 5 lakhs on the appellant.

2. The fact are not in dispute. A consignment imported by the appellant, declared to consist 24128 litres of base oil in 160 drums was on examination found to contain in 60 of these drums, tetracyclines kept in the oil in plastic bags. The appellant admitted in this statement before the officers of the Central Excise department that he had ordered import of the goods. He accepted that he had imported these goods including tetracyclines. He gave details of the instructions given to Kiran Dharamshi who said was a broker in such goods with regard to removal of the tetracyclines. It is essentially on the admissions contained in the statements that the Commissioner has come to this conclusion.

3. I do not find in possible to accept the contention of the counsel for the appellant that since these statements were recorded by the officers of the Central Excise department, and not the Customs officers, therefore the admissions contained in these statements cannot be used against the appellant. He contends that notification 68/83 dated 4.5.1963 as amended does not confer upon the Superintendent of Central Excise who recorded the appellant's statement the power under Section 108 of the Customs Act, 1962. The Commissioner is incorrect when he comes to this conclusion in reply to the same point made before him. This notification issued under Section 12 of the Central Excise Act made applicable some provisions and sections of the Customs Act in regard to the central excise duty. However, even on the finding that the powers of a customs officer to record a statement under Section 108 of the Customs Act were not specifically conferred upon the Superintendent, it would make no difference. The statement made by the appellant continues to be in the nature of an admission; the only difference would be that the sanctity of Section 108 of the Customs Act would not apply to these statements. But, like a statement made to any other private person it would be admissible and relevant as evidence.

The admissions made in these statements would, for example start on the same footing as an admission made by the appellant in a letter written to his friend. The response of the counsel for the appellant in a letter written to his friend. The response of the counsel for the appellant is that such statement has to be shown to be true and voluntary. A statement made by any one in his private capacity to any other person would be presumed to be voluntary unless of course the person who made the communication show that it was not so. That is not the case. The appellant had never at any stage resiled from the admission that he made or contended that it was obtained by force. Nor is it possible to say that these statements were not true. The appellant had stated that he had been importer of various goods over a period of years prior to the import of these goods. His conduct is therefore not so incredible as to warrant rejection of his admission.

4. The other contention that the real culprit was Kiran Dharamshi, who says the appellant handed over the goods to him for being sold and not the appellant has not been substantiated. That perhaps may or may not be the case for

enhancement of penalty imposed on Kiran Dharamshi, but I do not see how this will have a bearing on the appellant. It is who he imported the goods, brought from abroad, cleared though the customs declaration.

5. The further contention is that tetracyclines was found only in 60 drums out of 160 drums which contained base oil and that the confiscation of the goods under Sections 118 and 119 of 100 drums which did not contain the base oil is not justified. The contention of the departmental representative that the entire object of keeping the tetracyclines only in few of the drums was to ensure that the customs officer could be misled and believing that the drums contained only base oil, as the officers examine the goods normally on a percentage basis and normally not more than 5% at a randum would be selected and examined has to be accepted. Given that the goods are examined only on a percentage basis and the importer would not know before hand which drum would be subjected for examination, the fact that only some of the drums contained tetracyclines does not lead to the conclusion that the other drums were not used to conceal it. It is therefore reasonable to conclude that the entire quantity was used to conceal the tetracyclines.