

Sandeep Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-13-2002

Reported in : (2002)(146)ELT707TriDel

Judge : A T V.K., K Kumar

Appellant : Sandeep

Respondent : Commissioner of Central Excise

Judgement :

1. Today the matter is posted for hearing the stay application filed by Shri Sandeep for waiver of pre-deposit of penalty. As the issue involved is in very narrow compass we take up the appeal itself for disposal after granting stay for recovery of the penalty with the consent of the learned SDR.2. The facts in brief are that on 7-1-98 the Central Excise Officers intercepted a Tata-mobile bearing registration No. DL ICC 9126 loaded with speaker bearing brand name 'Pankaj'. As the driver was not having any excise documents the officers seized speaker valued at Rs. 12,300/- and Tata mobile of Rs. 2 lakhs for further action under Central Excise law. Tata mobile is owned by the appellants. The Dy. Commissioner/ under Adjudication Order No. 98/99, dated 18-3-99, confiscated the seized goods with an option to redeem the same on payment of fine, demanded the duty and imposed penalty on M/s. G.C. Electronics. The Dy.

Commissioner also imposed penalty of Rs. 1 lakh on Pankaj Electronics and Dinesh T.V. Electronics and confiscated vehicle in question with an option to

redeem the same on payment of fine of Rs. 30,000/- and imposed penalty of Rs. 1 lakh on the appellants. On appeal the Commissioner (Appeals) under the impugned Order reduced the penalty to Rs. 25,000/-. It has been mentioned in the memorandum of appeal that the vehicle was intercepted by the officers after the goods had been loaded from the premises of G.C. Electronics; that the impugned Order does not attribute any role to the appellants and as such neither the vehicle is liable to be confiscated nor the penalty is imposable on him; that his driver was not given any invoice/challan on the ground that the goods were exempted goods; that while transporting the goods the transporter merely act on the instructions of the person who hires the vehicle and he cannot be penalized for the wrongful act of such person; that penalty can be imposed under Rule 209A only, if a person knowingly deals with any goods which he knows are liable for confiscation; that the present appellants has neither transported the goods knowingly that these were liable to confiscation and as such no penalty is imposable. We also heard Shri A.S. Bedi, learned SDR. Rule 209A of the Central Excise Rules, 1944 under which the penalty has been imposed on the Appellants provides for imposition of penalty on any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, an excisable goods which he knows or has reason to believe are liable to confiscation. It is not the case of the department the appellant was himself driving the vehicle. Further, no evidence has been brought on record to show that the appellant was knowing that the excisable goods which were loaded into his truck were liable for confiscation. In absence of any such material no penalty can be imposed on the appellant. The vehicle in which the excisable goods were found loaded can be confiscated under the provisions of Section 115 of the Customs Act read with Section 12 of the Central Excise Act and Notification No. 68/63-C.E., dated 4th May, 1963, as amended. As per Sub-section (2) of Section 115 of the Customs Act any conveyance used as a means a transport in the removal of excisable goods in contravention of provisions of the Central Excise Rules shall be liable to confiscation unless the owner of the conveyance proves that the vehicle was used without the knowledge or connivance of the owner or his agent. It has been contended by the appellant that no invoice was given to his driver as it was claimed by the hirer of the vehicle that

the goods are exempt. The department has not controverted the submissions made by the appellant. We do find force in his submissions that it is difficult to presume that the driver will know whether the goods manufactured by the hirer are liable to excise duty or not. Accordingly we find that vehicle is also not liable for confiscation. We, therefore, allow the appeal.

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