K. Chavda Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-25-2002

Reported in : (2003)(155)ELT47Tri(Mum.)bai

Judge : J Balasundaram, J T J.H.

Appellant : K. Chavda

Respondent : Commissioner of Customs

Judgement :

1. The above appeals arise out of the order dated 8-5-2000 passed by the Commissioner of Customs, Kandla, by which he has inter alia cancelled the private bonded warehouse licence of M/s. Parson Brothers in terms of Section 58(2)(b) of the Customs Act, 1962, confirmed duty demand of Rs. 2,01,712/- together with interest on M/s. Parson Brothers on goods covered by Shipping Bill No. F/730, dated 1-4-99 under Section 28 read with Section 72 of the Customs Act, imposed penalty of Rs. 2 lakhs on M/s. Parson Brothers for contravention of the provisions of Sections lll(d), lll(j) and lll(o) of the Customs Act and penalty of amount equal to duty under Section 114A of the Act, imposed penalties of Rs. 25,000/- and Rs. 55,000/- respectively on Shri Rajendra Bansal and Shri K. Chavda and ordered confiscation of White Maruti Van owned by Shri Rajendra Bansal under Section 115(2) of the Customs Act with option to redeem the same on payment of fine of Rs. one lakh.

2. The brief facts of the case are that M/s. Bayland Shipping Agency, Gandhidham who are the agents of the vessel M.V. Rahmi Pak had informed the Customs authorities that the said vessel had sailed from Kandla on 2-4-99 and that the EGM submitted by them on 6-4-99 was not accepted as complete for the reason that one shipping bill filed by M/s. Parson Brothers who are licensee of private bonded warehouse for the supply of bonded stores to the vessel did not figure in the EGM. M/s. Bayland Shipping Agency, also stated in their letter that filing of the said shipping bill and supply of such stores was neither informed to them by M/s. Parson Brothers nor by Master of the vessel. Investigations into movement of goods covered under shipping bill No. F/730, dated 1-4-99 filed by M/s. Parson Brothers for supply of beer, whisky, cigarettes commenced and revealed that goods covered by shipping bill did not enter the Docks premises and consequently these goods were never supplied to the vessel. The premises of the bonded warehouse of M/s.

Parson Brothers and other premises were searched, statements of Shri Rajendra Bansal, authorised signatory of M/s. Parson Brothers, Shri K.Chavda, employee of M/s. Parson Brothers and others were recorded under Section 108 of the Customs Act, 1962. It was alleged that Shri K.Chavda had master minded a plan to divert the bonded cargo covered by the shipping bill to Gandhidham Market by getting the shipping bill noted when no formal order was placed for supply of bonded stores on M/s. Parson Brothers by the Master of the vessel, that there was a conspiracy between several persons to divert the bonded cargo to local market, that Rejendra Bansal by signing blank shipping bill and handing it over to Shri Kishore Chavda, was also actively involved with the conspirators and would have been beneficiary to Rs. 15,000/- which was to be paid to him (as stated by Shri Kishore Chavda). Show cause notice was issued to several persons. The notice charged the noticees with contravention of provisions of Sections 62(2), 68, 69, 71, 72(1)(a) and (d) of the Customs Act, proposed to confiscate the goods covered under the Shipping Bill No. F/730, cancellation of private bonded warehouse licence and proposed penal action against the appellants, among others.

M/s. Parson Brothers deposited the duty amount of Rs. 1,91,952/- and also deposited an additional amount of Rs. one lakh towards fine and penalty. The adjudicating authority upheld the charges in the show cause notice, cancelled the private bonded warehouse licence issued to M/s. Parson Brothers and imposed penalties on them as well as on the other two appellants. Hence, these appeals.

3. We have heard Shri Naresh Thacker, ld. Counsel and Shri Hitesh Shah, D.R. (1) M/s. Parson Brothers : The records reveal contravention by Shri Kishore Chavda in personal capacity in collusion with others and there is no violation of law by M/s. Parson Brothers who had also taken subsequent action by dismissing Shri Kishore Chavda from their services. There is no material on record to establish that the action of Chavda was with the knowledge or consent with M/s. Parson Brothers, none of whose partners live in Kandla, and who have therefore engaged Shri Rajendra Bansal to look after the affairs of the firm. Therefore, the finding of the Commissioner that omission and commission on the part of M/s. Parson Brothers has lead to violation of Sections 62(2), 69, 71, 72(1)(a) and (d) of the Customs Act is not sus-tainable. We, therefore, set aside the penalty imposed upon M/s. Parson Brothers under Section 112 and Section 114A of the Customs Act, 1962. For the same reason, we set aside the cancellation of the private bonded warehouse licence issued to M/s.

Parson Brothers as they have not contravened any provision of the Customs Act, Rules or Regulations or committed breach of any of the conditions of the licence, so as to attract the provisions of Section 58(2)(b) of the Customs Act.

(2) Shri Rajendra Bansal: The plea raised is that Shri Bansal had to go with his family to Jaipur on 28-3-99 in order to fulfil certain social obligation and returned to Gandhidham on 7-4-99 and, that before leaving for Jaipur he had signed one set of shipping bills to enable sale and shipment of consumable stores to foreign going vessels so as to maintain regular supply of goods to their customers, and that he was unaware of the contravention by Shri Kishore Chavda. We have considered this submission. We cannot accept the contention that the only lapse on the part of Shri Bansal is misplacement of trust in Shri Kishore Chavda. We can do not better than to reproduce the findings of the Commissioner on the liability of Shri Rajendra Bansal to penal action, which is as under :- "64. Shri Rajendra Bansal (Shri Popatbhai), who is authorised signatory of M/s. Parson Brothers office at

Gandhidham, has taken a plea that, while the illegal removal of Bonded store took place, he was in Jaipur and the conspiracy was purely between Shri Naresh Sharma and Shri Kishore Chavda and that he was unaware of illegal removal. I find that Shri Kishore had taken a plea in his statement dated 14-4-1999 that he had not told the full truth in his statement dated 12-4-99 for the reason that, on 12-4-99 Shri Popatbhai had accompanied him to the Custom House and he had felt that, if he told full facts to Customs and also to Popatbhai then he might get heart attack as he was a heart patient. Thus clearly indicate that Shri Popatbhai was not fully aware of the whole truth of the matter.

However, the record of the case reveal that, as far as 9-4-99, Shri Popatbhai had become aware through Shri Kishore Chavda that some thing was wrong with the Bond Store Supplies covered by Shipping Bill No. F-730, dated 1-4-99 filed by M/s. Parson Brothers. Shri Popatbhai has confessed in his statement dated 13-4-99 that, on 9-4-99, he was informed of some irregularity in supplies of Bonded goods to vessel M.V. RAHMI PAK under cover of a Shipping Bill filed by M/s. Parson Brothers had been made and that one Shri Naresh had landed the supplies, which Shri Kishore of M/s. Parson Brothers had made on vessel M.V. RAHMI PAK and Shri Naresh had brought the goods supplied back to Gandhidham. Moreover, I find that it has been confessed by Shri Popatbhai that he had signed the Blank Shipping Bills, thus had given a full liberty and opportunity for conspirators like Shri Kishore to take advantage of and to break the Customs Law. Shri Popatbhai is a responsible Authorised Signatory of M/s. Parson Brothers at their Gandhidham Office and he has neglected his duties and failed to do any precaution which would have avoided such sad episode. There is a definite omission on his part, which have lead to the evasion of duty and diversion of cargo. As a Licensed private bonded Warehouse Keeper, it was imperative on his part to have due care to see that a proper supervision is exercised in his absence. Further, I find that the Maruti Van owned by Shri Popatbhai Bansal was used to transport & to distribute the smuggled goods to various buyers in Gandhidham. Thus, it is seen that Shri Popatbhai and M/s. Parson Brothers have failed to exercise proper control over the staff & keep the effective supervision on the staff. Moreover, it is seen that the warehouse Register were not upto date and records were incomplete and Warehouse lock was not properly sealed. It is only after this episode that Shri Bansal and M/s. Parson Brothers woke up to the reality and promptly paid duty and also anticipated fine and penalty and also promised to pay more fine penalty if imposed later on adjudication. In fact Shri Bansal has also confessed in his statement dated 13-4-2000 that when he become aware of irregularity, he did not have courage and kept silent and did not inform Customs anything. Infact, as a private Licence Holder of a Bonded Warehouse, it was his primary responsibility to suo motu reveal everything to the Customs Authorities, which he was failed to do. M/s. Parson Brother Gandhidham and Shri Rajendra Bansal did not have any control inasmuch as no proper paper seal was found on the lock of the Warehouse when investigating officers visited the Warehouse. Shri Bansal had accepted his responsibility for all the wrong doing and also evasion of duty as a Authorised Representative of M/s. Parson Brothers.

65. M/s. Parson Brothers in their written submissions dated 19-11-99 have taken a view that, Warehouse Register, books of account of Company, the Sales Tax Register, Permit Signed by the Master, encashment certificate, cheque issued by M/s. Nanavati etc. were the records found in their office and all records and registers were complete in all respects and entries were properly made and removal accounted for and these documents were not incriminating according to them. However, in his statement recorded under Section 108 of the Customs Act, 1962 on 3-10-99, Shri Kishore has confessed that entries were made as regards subject case; in the Warehouse Register, Sales Tax Register, all records/Account Books only as a paper formalities and are fake. The invoice PB/KDL/002/99 dated 2-4-99 for US $ 3202.50 raised against Master of M.V. RAHMI PAK is also fake & entry of Rs. 1,34,003.70 in the cash book is also fake entry. It has also been confessed that though he had not supplied the goods covered under Shipping Bill No. F-730, dated 1-4-1999 on the vessel M.V. RAHMI PAK, he completed Port formalities, had obtained signature of Port Officials like A.T.M. / T.I. of K.P.T. for Wharfage Certificate and endorsement of Shed Superintendent of K.P.T. on reverse of Shipping Bill just to show on paper that goods have been placed on M.V. RAHMI PAK. These actions have been done by Shri Kishore Chavda & he himself has stated that these actions were just a paper formality. In view of this, contention by Shri Bansal and M/s. Parson Brothers that these documents are not incriminating and records are properly kept is totally wrong. In fact the aforesaid

discussion shows that there is a strong case against M/s.

Parson Brothers for action in terms of Section 58(2)(b) of the Customs Act, 1962 as well as penal action against both Shri Rajendra Bansal as well as M/s. Parson Brothers, Gandhidham." We, therefore, uphold the penalty imposed on Shri Rejendra Bansal.

The confiscation of the White Maruti Van belonging to Shri Rejendra Bansal under Section 115(2) of the Customs Act 1962 for having transported and diverted liquor and cigarettes is also upheld. However, the fine in lieu of confiscation is reduced to Rs. 50,000/- (Rupees fifty thousand only), in view of the submission that its value at the time of seizure was only Rs. 2 lakhs and the seizure of the vehicle took place over 3 years ago.

5. Shri Kishore Chavda: This appellant has admitted his role in the conspiracy of diversion of bonded stores to local market but has only pleaded for leniency in the quantum of penalty. We see no reason to reduce the amount of penalty imposed i.e. Rs. 55,000/- as he is to quote the Commissioner, "fountain head of conspiracy" in the subject case. We, therefore, uphold the penalty upon him.