

Jagraj and ors. Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-23-2002

Reported in : (2003)(87)ECC176

Judge : S Kang

Appellant : Jagraj and ors.

Respondent : Cc

Judgement :

1. Appellants filed these appeals against the common adjudication order passed by the Commissioner of Customs, therefore, are being taken up together. S/Shri Charan Singh and Jagraj Singh, owners of the trucks, filed appeals against the confiscation and imposition of redemption fine on their trucks. S/Shri Jai Bhagwan and Pappu filed appeals challenging the imposition of penalty of Rs. ten thousand under Section 112 of the Customs Act.

2. Brief facts of the case are that on 6.5.99, two. trucks were intercepted by the Customs officers and 25 bags containing small cardamoms were recovered from each truck. Statements of Shri Jai Bhagwan, driver of one of the trucks and Shri Pappu, cleaner of one of the trucks, were recorded as other driver and cleaner ran away from the spot. S/Shri Jai Bhagwan and Pappu, in their statements, under Section 108 of the Customs Act, admitted that the smuggled cardamoms were loaded in their truck by Shri Raja Babu and they were to receive higher rate of fare and also Rs. one thousand extra for transporting the smuggled cardamoms to

Delhi. The cardamoms valued at Rs. ten lakh was not claimed by anybody. Shri Raja Babu never appeared before the adjudicating authority in spite of being summoned. The adjudicating authority confiscated 2500 kgs. of small cardamoms alongwith trucks.

The adjudicating authority ordered release of one truck on payment of redemption fine of Rs. one lakh and the second truck was ordered to be released on payment of redemption fine of Rs. 50,000. Penalties of Rs. 10,000 were imposed on S/Shri Jai Bhagwan and Pappu.

3. The contention of the appellants is that small cardamoms were not notified goods, therefore, the onus is on the revenue to prove that the seized goods were smuggled goods. For this he relies upon the decision of the Tribunal in the case of Ram Prakash and Ors. v. CC, New Delhi, 1999 (83) ECR 236 (T). The contention of the appellants is also that the experts, who examined the goods to say that small cardamoms were of foreign origin, had not given any reasoning in their opinion as to how they reached the conclusion regarding the origin of the cardamoms. The goods, in question, were loaded at the instance of Raja Babu and drivers and conductors of the trucks had no knowledge regarding the nature of the goods whether they were smuggled goods or of Indian origin.

4. The contention of the revenue is that in their statements, S/Shri Jai Bhagwan and Pappu, specifically, stated that they were getting higher fair and also extra reward for transporting the smuggled cardamoms from Nepal.

5. They also admitted in their statements that the cardamoms were smuggled from Nepal and reached the place of loading through bullock carts. The contention of the revenue is also that nobody claimed the goods worth Rs. ten lakh. If the goods were legally imported or of Indian origin, then Raja Babu could have easily claimed the goods. As the appellants had not made any request to cross-examine the experts, regarding their expert opinion, they cannot challenge now the opinion given by the experts.

6. In this case, small cardamoms were recovered from the trucks and nobody claimed the goods. S/Shri Jai Bhagwan and Pappu in their respective statements,

admitted that the goods were loaded at the instance of Raja Babu and they were having knowledge that the goods were of smuggled nature. For this, they were getting higher fare as well as additional reward. As the appellants themselves admitted that the goods were of smuggled nature and the circumstances of the case that nobody produced any evidence to show that the goods were of Indian origin or legally imported, lead only to the conclusion that the goods were of smuggled nature. In the case law, relied upon by the appellants, bearings which were freely available in India were seized from the appellants in that case and revenue failed to show that the bearings were smuggled into India. Taking into consideration the facts and circumstances of the case, the confiscation was set aside in that case. In the present case, the appellants were not claiming the goods, in question, nor they were producing any evidence in respect of Indian origin or legal import of the goods, therefore, the ratio of the case law, relied upon by the appellants, is not applicable in the facts and circumstances of the present case. As the trucks were used in transporting the smuggled goods, they were liable to confiscation. The Hon'ble Supreme Court in the case of Kirpal Singh v. C.C., 1998 (104) ELT 405 (SC) held that since the appellants have failed to prove, as required under Section 115(2) of the Customs Act, 1962, that at the time when the contraband goods found in the truck, it was being used without the knowledge or connivance of the appellants/his agents.

Therefore, the confiscation is upheld. In the present case, trucks were used with the knowledge of the drivers and cleaners of the trucks.

Therefore, there is no infirmity in the impugned order in respect of confiscation of the goods. However, taking into consideration the facts and circumstances of the case, the redemption fine is reduced to Rs. 30,000 each. In respect of S/Shri Jai Bhagwan and Pappu, the appellants, as they were transporting smuggled goods, they are liable for penal action. Therefore, the impugned order is upheld. The appeals are disposed of as indicated above.

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