

**Ashok Kumar Gupta Vs. Cce**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Oct-30-2002

**Reported in :** (2003)(87)ECC73

**Judge :** P Bajaj

**Appellant :** Ashok Kumar Gupta

**Respondent :** Cce

**Judgement :**

1. This appeal has been preferred by the appellants against the impugned order of the Commissioner (Appeals) vide which he had affirmed the Order-in-Original dated 31.8.2000 of the Additional Commissioner who ordered confiscation of the goods and imposed penalty of Rs. 25,000 on the appellants and on some other noticees (who are not appellants in this appeal).

2. The facts giving rise to the present appeal may briefly be stated as under:-- On 18.2.99, on receipt of information, central excise preventive officers of Ghaziabad intercepted two trucks bearing registration Nos. DL-IG/8-0665 and DL-IG/B-1415 on the Delhi--U.P. Board. Those trucks were found loaded with 15.160 MT. and 15.170 MT. respectively of copper ingots. Both drivers of the trucks handed over bills issued by M/s. Gautam Steel Centre, Ahmedabad and also consignment notes and challans issued by M/s. Surya Roadways, Ahmedabad, all dated 14.2.99, to the officers. The serial number of the bills were hand written and description of the goods mentioned therein was copper plates and not copper

ingots which were actually loaded in the trucks. The officers detained both the trucks and the goods loaded therein, under panchnama dated 18.2.99. The statements of both the drivers were recorded wherein they disclosed that they were employed in a transport company M/s. Palco Golden Goods Carrier and the trucks also belonged to that company. They also disclosed that the goods found in the trucks were booked by M/s. Surya Roadways and were loaded from godown situated at Jaitalpur, Bombay Road, Ahmedabad.

3. After recording the statements of both the drivers of the truck, the Assistant Commissioner, Ahmedabad was directed to ascertain the duty paid character of the detained goods (copper ingots) from M/s. Gautam Steel Centre who issued the bills. A.C. made enquiries from Chandamal Jain, partner of the firm who deposed that he had never dealt with the goods as well as with M/s. Surya Roadways. He also disclosed that his firm was engaged in the trading of M.S. and S.S. round bars only and never purchased or; sold any copper plates or copper ingots. On receipt of the report of the A.C. which was accompanied by sample invoice and challans issued by M/s. Gautam Steel Centre, it became evident that the documents accompanying the detained consignment loaded in the trucks were fake. Thereafter, the statement of Jagjit Singh, owner of Truck No. DL-IG/BO 1415 was also recorded who disclosed that the goods were booked by M/s. Surya Roadways and the truck was hired from the office of M/s. Palco Golden Goods Carrier. He showed his ignorance about the consignor of the goods. To the same effect was the statement of Joginder Singh, owner of the second truck. Summons were also issued to M/s. Northern Sales Corporation, Delhi in order to ascertain the identity of the consignee, origin and the duty paid character of the detained goods, but the same remained undelivered. The statement of the present appellant who claimed himself to be the proprietor of M/s.

Surya Roadways at that time, was also recorded wherein he disclosed that one Mukesh Bhai hired two trucks from him on telephone and for those two trucks, the amount decided was Rs. 108 per quintal and he arranged trucks from M/s. Palco Golden for Rs. 97 per quintal and that he was to get Rs. 11 per quintal, as commission. He further disclosed that as per direction of Mukeshbhai, he informed the drivers of the trucks to take those trucks to Patchay Hotel and that the had not

received the freight for both these trucks. The statement of the appellant was also again recorded at his request on 27.9.99 wherein he reiterated his earlier statement and further stated that he did not know Shri Mukeshbhai earlier. He also did not reveal the identity of the consignee and consignor of the goods.

4. On completion of the investigation, show cause notice was issued to the appellant proprietor of M/s. Surya Roadways and owners of the trucks. The adjudicating authority after affording an opportunity of hearing to all of them, adjudicated the show cause notice and ordered absolute confiscation of the goods, as no claimant came forward to claim the goods. The adjudicating authority further ordered the confiscation of the trucks but gave option to get the same redeemed on payment of Rs. 50,000 each and further imposed penalty to Rs. 10,000 each on the owners of the trucks and of Rs. 5,000 each, on the drivers.

On the appellant, the adjudicating authority had imposed penalty of Rs. 25,000 under Rule 209A of the Central Excise Rules.

5. The Commissioner (Appeals) had affirmed the abovesaid order of the adjudicating authority, dated 28.11.2000, through the impugned order, against the appellant.

6. The learned counsel for the appellant has raised two contentions.

Firstly, that the goods could not be confiscated, rather should have been returned to the appellants from whose custody the goods were seized. Secondly, no penalty under Rule 209A of the Rules could be imposed on the appellant.

7. On the other hand, learned SDR has refuted the arguments of the counsel and reiterated the correctness of the impugned order.

9. To elaborate the first ground, the learned counsel has argued that even if the consignor of the goods shown in the bill, M/s. Gautam Steel Centre, Ahmedabad, did not come forward to claim the goods and furnished no proof regarding discharge of appropriate central excise duty in respect thereof, the goods should have been released to the appellant being a transporter of those goods under the contract under which his possession was as of trustee/bailee. Non-duty paid

character of the goods could not stand in the way of the appellant for claiming the goods. In support of his argument, the counsel has placed reliance on the ratio of law laid down in Collector of Central Excise v. Decent Dyeing Company, 1990 (45) ELT 201 and Anil Kumar Pandey v. CC, Shillong, 1999 (35) RLT 964. But, in my view, the contention of the counsel is wholly mis-conceived and devoid of law. Admittedly, the appellant is not owner of the goods. He is neither manufacturer nor buyer of the goods from a manufacturer. Even in reply to the show cause notice, he had not pleaded or claimed himself to be the owner of the goods in any capacity. According to him, as per statement which he made before the officers, one Mukeshbhai hired two trucks from him for transportation of the goods and he was to charge freight at the rate of Rs. 108 per quintal from him. He arranged those trucks from M/s. Palco Golden Company and agreed to pay charges at the rate of Rs. 97 per quintal to that company. He also stated in his statement that he was to get his commission of Rs. 11 per quintal and the trucks were sent by him on the direction of Mukeshbhai to Parchay Hotel. In the face of his such a statement, he could not be, in the eye of law, termed to be owner of the goods in question. He was only to get his commission for transportation of the goods from Ahmedabad to Delhi. In the bills accompanying the goods which were handed over by the drivers of the trucks at the time of interception, to the central excise officers, the name of the consignor recorded was M/s. Gautam Steel Centre and not the appellant. Similarly, the name of consignee recorded in the documents i.e. bills and challans, was M/s. Northern Sales Corporation. The appellant could not be taken to be trustee or bailee of the goods. He could only be said to be a person who was helping the hidden manufacturer in removal of the goods, without payment of central excise duty from one place to another. The manufacturer was hidden as recorded manufacturer/consignor of the goods M/s. Gautam Steel Centre, did not accept the ownership of those goods. Their partner Shri Chandmal Jain denied the concern with the seized goods i.e. copper ingots. He rather stated that his firm was not engaged in the manufacture of such goods but were only trading in M.S. and G.S. round bars. He denied the sale of goods to any one. Even the description of the goods recorded in the documents, detailed above, which were handed over by the drivers of the truck, was incorrect and wrong. The goods in those documents were described as copper plates while in reality those were

copper ingots.

10. From the totality of the above referred facts and circumstances brought on record, it is quite evident that the goods were being transported by the appellant in connivance with the manufacturer, for evading duty in a clandestine manner, under fake documents. Even the consignee of the goods i.e. Northern Sales Corporation did not come forward to collect those goods.

11. The argument of the counsel that as transporter the appellant is entitled to the custody of the goods, cannot be accepted, in view of the facts and circumstances, referred to above. The ratio of law laid down in Collector of Central Excise v. Decent Dyeing Company (supra) is not attracted to the facts of the case. In that case, Decent Dyeing Company was dyeing acrylic yarn on job charges. That yarn was being received by them from the trader in the market or from the manufacturers of hosiery goods and they were returning the same to them after completing the required process. They were paying duty at the rate of Rs. 10 per kg. in terms of Notification No. 125/75-CE dated 12.5.1975 on the presumption that base yarn had discharged duty liability before it was received for dyeing. It was, under these circumstances, the Apex Court observed that burden to prove that the goods were not duty paid, was on the Revenue and not on the buyer or job worker. But in the present case, the facts are quite different, as detailed above. The appellant is not buyer of the goods from the market. He has nowhere pleaded so in reply to the show cause notice. He is only a transporter who was to get commission on the transportation of the goods.

12. Similarly, law laid down in Anil Kumar Pandey v. CC, Shillong (supra) is not of any help to the appellant in this case. That was the case when: seizure of the goods was made under Section 111 of the Customs Act and the Tribunal took the view that transporter could claim the goods having been recovered from his custody even if the owner had not come forward. In the instant case, the goods had been seized having been removed clandestinely from the factory of the manufacturer, without payment of duty. The confiscation of the goods had been made under the provisions of the Central Excise Act and penalty has been imposed on the appellant under Rule 209A of the Rules framed under that Act. In

the light of the facts and circumstances, referred to above, the goods cannot be claimed by the appellant being neither manufacturer nor owner but only transporter who was to get commission in transportation of the goods from one place to another.

13. The learned counsel has no doubt made reference to the provisions of Section 110 & 125 of the Customs Act to contend that the appellant could claim custody of the goods having been seized from his possession. But, as observed above, the goods being non-duty paid, had been rightly confiscated under the provisions of the Central Excise Act. No aid from the provisions of the above referred sections of the Customs Act can be taken by the appellant for claiming goods in the instant case. Absolute confiscation of the goods in the instant case had been rightly made by the adjudicating authority as neither owner nor purchaser/consignee had come forward to claim the same on furnishing proof regarding payment of appropriate duty in respect thereof. The confiscated goods are excisable and dutiable.

14. Regarding imposition of penalty under Rule 209A of the Rules, I am of the view that in view of the facts and circumstances detailed above, the penalty had been rightly imposed on the appellant under Rule 209A, as he was facilitating the manufacturer, in clandestine removal of the goods from one place to another, without payment of duty under the fake documents. The amount of penalty imposed on him also cannot be said exorbitant in view of his conduct.

15. In view of the above, the impugned order of the Commissioner (Appeals) is upheld against the appellant in toto. The appeal of the appellant is dismissed being without merit.

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