Ashok Kumar Gupta Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-14-2002

Reported in : (2003)(86)ECC355

Judge : P Bajaj

Appellant : Ashok Kumar Gupta

Respondent : Cc

Judgement :

1. This appeal has been filed by the appellant against the impugned Order-in-Original dated 22.11.2001 of the Commissioner of Customs vide which penalty of Rs. 2 lakhs has been imposed on him under Section 112(b) of the Customs Act.

2. On the interception of the truck on 16.2.1999 by the DRI Officers, 101 pcs. of ball bearings were recovered and out of those, 31 pcs. bore Japanees mark while the others carried some other number without any indication of the country of origin. On completion of investigation, show cause notice was issued to the driver of the truck, namely, Shri Harnam Singh; owner of the truck, Shri Satish Kumar; and also to Shri Vinod Kumar of M/s. Yadav Trading Co., who issued cash/credit memo to the appellants for rice bran. Show cause notice was also issued to Shri Ramesh Prasad of M/s. New Janta Road Lines, the transport company who issued the bitty to the appellants for the transportation of rice bran.

The Commissioner of Customs, on adjudication, imposed penalty of Rs. 5,000 on Shri Harnam Singh (Driver); Rs. 25,000 on Shri Satish Kumar (owner of the truck); and Rs. 2 lakhs on the present appellant, Shri Ashok Kumar Gupta, while the other two, namely, Shri Ramesh Prasad and Shri Vinod Kumar were let off. The present appellant challenged the adjudication order before the Tribunal and the Tribunal set aside that order and remanded the case back vide order dated 18.5.2001. After remand, the Commissioner has passed the impugned order vide which he has maintained the penalty of Rs. 2 lakhs on the appellant by holding that he was involved in the smuggling of the ball bearings.

3. The validity of the impugned order, on merits, has not been contested before me. The learned counsel has prayed for only reduction in the penalty amount on the ground that the appellants had not claimed the ownership of the ball bearings and that he had been penalised only by drawing assumptions and presumptions from the statement of Shri Ramesh Prasad and Shri Vinod Kumar who allegedly deposed that the appellants obtained bilty and cash memo respectively from their companies for the rice bran and that the appellant is a poor person who has got no means of livelihood at present. The learned counsel has also stated that on other co-noticees, named above, very small amount of penalty had been imposed, while penalty imposed on the appellant is no higher side.

4. I have gone through the record. Keeping in view of the facts and circumstances of the case, referred to above, in my view the prayer of the learned counsel deserves to be allowed. The penalty imposed on the appellant is reduced to Rs. 25,000 (rupees twenty five thousand only).

Except for this modification, the impugned order of the Commissioner is maintained.