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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-22-2002

Reported in : (2003)(153)ELT561TriDel

Judge : A T V.K., P Bajaj

Appellant : Anil Kumar

Respondent : Commissioner of Customs

Judgement :

1. Shri Anil Kumar Gupta has filed these two appeals challenging the imposition of penalties of Rs. 1 lakh & 2 lakhs under Order-in-Original Nos. 10/98 & 61/98 both dated 26-2-98 respectively.

2. Shri Alok Arora, learned Advocate, submitted that the appellants, on a pilgrimage to Haridwar met some people distributing cloths to the poor; that he joined them and was thereafter introduced to one Shri Ramesh Chand, Manager of Lok Seva Sansthan, Haridwar; that while they were distributing cloths some foreigners approached them and asked whether they could distribute clothes if donated by them (foreigners); that Shri Ramesh Chand told the appellants that he would be made President of Lok Seva Sansthan at Saharanpur and to print letterhead of the Sansthan showing the address of his shop; that in August/September he was instructed to send signed letterheads to one Hasim All, stated to be the Asst. of a Clearing Agent at Kandla; that accordingly all the papers of Sansthan, i.e. registration, letterheads, etc. were sent by him; that thereafter

Sansthan received used cloths from Kandla port for distribution without any letter or bill from the Clearing Agent; that these cloths had been distributed at different places. The Learned Advocate further, mentioned that a show cause notice dated 28-3-96 was received for demanding duty on the ground that old cloths were not distributed to the poor and needed people and as such condition of Notification No. 148/94 were not fulfilled; that another show cause notice dated 24-1-97 was received by him for showing cause as to why the consignment of old and used cloths imported under Bill of Lading dated 24-11-95 should not be confiscated and penalty should not be imposed on him along with other persons; that the Commissioner under Adjudication Order No. 10/98, dated 5-2-98 has imposed a penalty of Rs. 1 lakh besides confiscating the goods holding that Lok Seva Sansthan, Saharanpur had no knowledge of import of old and used cloths at Kandla port in its name and certain persons in fraudulent manner used the name of the trust to import old and used cloths without the authority of valid import licence; that the Commissioner has, further, held that as Shri Anil Kumar Gupta had signed some blank letterheads of the trust and handed over the same to one Shri Meethu and as such had facilitated the fraud; that similarly under Adjudication Order No. 61/98 the Commissioner had imposed penalty on the appellant holding that the goods were not gifted or donated but these were purchased from the suppliers. The learned Advocate contended that in view of the specific finding of the Commissioner in Adjudication Order No. 10/98 that Lok Seva Sansthan had no knowledge of import of old and used cloths at Kandla port in its name, no penalty is imposable on the appellant who has not done any act which would render the goods liable to confiscation under Section 111; that the appellant had also not acquired the possession or in any way concerned with the goods; that the act of signing some blank letterheads of the Trust by the appellant does not render him liable for penal action under Section 112 of the Act; that he was only acting as the President of the trust and signed blank letterhead, etc. only to propagate the work of the trust which was to distribute the cloths to the poors. The learned Advocate also submitted that the appellant was at no point of time aware of the modus operandi adopted by Shri Meethu who promised him to get the used cloths for Sansthan. The learned Advocate finally submitted that in another case adjudicated by the Commissioner of Customs, Kandla (Order-in-Original No. 27/97, dated 13-

8-97) no penalty was imposed on the appellants along with others on the ground that the Sansthan was not aware about the import of the goods in its name; that similarly in the present matter also no penalty should be imposed on the appellant.

The learned Advocate has also mentioned that Shri Anil Kumar Gupta was not the President of Lok Seva Sansthan.

3. Countering the arguments Mrs. Charu Baranwal, learned SDR, submitted that in the appeal memorandum filed by Lok Seva Sansthan, Shri Anil Kumar Gupta has been shown as the President and the address of both Anil Kumar Gupta and Lok Seva Sansthan is one and the same; that Anil Kumar has also sighed the appeal petition filed by the Sansthan as its President. The learned SDR referred to the statement dated 3-2-96 wherein he had admitted to have given some papers and letterheads duly signed by him; that in his further statement dated 13-2-96 he again admitted to have given blank letterheads of the Sansthan duly signed by him to one Rakesh. He also deposed that it was Meethu who told him to give 4/5 signed letterheads to Hassim Ali which were signed, duly affixed with the seal of Distt. Magistrate of Saharanpur. The learned SDR, further, submitted that by making available letterheads of the Sansthan, Shri Anil Kumar Gupta has helped in importing the impugned products in violation of the conditions of the Notification No. 148/94 of the Customs, and therefore, imposition of penalty on him under Section 112 of the Customs Act is justified.

4. We have considered the submissions of both the sides. The Commissioner has given specific finding that the goods were not imported by Lok Seva Sansthan which, in fact, had no knowledge of imports of old and used cloths in its name. We agree with the finding of the learned Commissioner that the appellant has by signing the blank letterheads of the trust, giving copies of the registration certificate and providing end use certificate had facilitated the misuse of benefit given to a charitable trust under the notification. It has been admitted by the appellant in his different statements that he had given the blank letterheads and other papers. In view of this the penalty is imposable on the appellant under Section 112 of the Customs Act as his act has rendered the goods liable for confiscation under Section 111 of the Act. However, in view of the facts and

circumstances of the case we are of the view that the interest of justice will be met, if the penalty imposed on the appellant is reduced to Rs. 10,000/- and Rs. 20,000/- respectively. We order accordingly. Both the appeals are thus partly allowed.