

Him Electronics Traders Vs. Commr. of Customs

Him Electronics Traders Vs. Commr. of Customs

SooperKanoon Citation : sooperkanoon.com/29827

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-14-2003

Reported in : (2003)(159)ELT761TriDel

Judge : P Bajaj

Appellant : Him Electronics Traders

Respondent : Commr. of Customs

Judgement :

1. The above captioned appeals have been directed against the common order-in-original dated 17-6-2002 vide which the Commissioner of Customs (General), adjudicating authority, had ordered the confiscation of the seized goods under Section 111(d) of the Customs Act with an option to the owner to get the same redeemed on payment of fine of Rs. 2.5 lakhs, and also imposed penalty of Rs. 2 lakhs on appellant no. 2, partner of the firm, appellant no. 1, under Section 112(b) of the Customs Act.

2. The facts leading to the filing of the present appeals may briefly be stated as under - On 19-5-1998, the D.R.I, officers searched the residential premises of the appellant No. II at New Rohtak Road and also his business godown premises. During the search, the officers recovered 184 pcs.

of Pioneers Speakers from his residence and 20 items of Car Stereo System/Car Cassette, CD remote changer, car audio and speaker of different brands from his

business godown premises. All these goods were of foreign origin and as appellant No. 2 could not produce any document, for their lawful acquisition, the same were seized. The statement of appellant No. 2 was also recorded wherein he claimed himself to be partner of the firm, M/s. Him Electronics Traders (appellant No. 1) and stated that the goods recovered from his residence and godown premises, were purchased by him from different companies against invoices. On completion of investigation, show cause notice was served on him to show cause as to why the goods be not confiscated and penalty be not imposed. In reply, he denied that the goods were smuggled goods and further alleged that he had purchased the seized speakers from M/s. Expert Trading Company, Karol Bagh, and also produced the photocopy of the invoice.

Regarding car stereo systems etc., seized from his business-god own premises, he submitted that these had been purchased by him from the several firms and in particular gave name of three firms (i) M/s.

Sethi Electronics; (ii) M/s. Sakshi Enterprises; and (iii) M/s. Jai Singh International. He also produced the bills in respect of the purchased items from these firms.

3. The Commissioner of Customs, however, did not accept the version of the appellants. He through the order dated 18-12-2000, ordered the absolute confiscation of the goods and imposed penalty of Rs. 3 lakhs on the appellant No. 2.

4. That order of the Commissioner of Customs dated 18-12-2000 was challenged by the appellants before the Tribunal and the same was set aside. The case was sent back to the adjudicating authority for fresh decision after holding due enquiry from the persons/firms, disclosed by the appellants, who sold the goods in question to them.

5. After remand, the adjudicating authority held the enquiry from M/s.

Expert Trading Company; Shri Ashok Jai Singh, Prop, of M/s. Jai Singh International; M/s. Sakshi Enterprises, but did not hold any enquiry from M/s. Sethi Electronics. The adjudicating authority after taking into consideration the evidence

collected from these firms ordered the release of 40 pcs. of speakers and some other goods as detailed in the impugned order itself, but maintained the confiscation of other seized goods and imposed penalty of Rs. 2 lakhs on appellant No. 2.

6. The impugned order has been challenged by the appellants in the present appeals.

7. The learned counsel has contended that there is no reliable evidence on the record to prove that the seized goods are smuggled goods. These goods had not been notified as prohibited goods which could not be imported without licence/prior permission of the competent authority.

The free import/sale of the goods in the country had not been restricted through any notification/order or under any other provision of the Customs Act. Therefore, the provisions of Section 123 of the Customs Act could not be invoked for raising presumption that the seized goods had been smuggled into India for the simple reason that the goods bore foreign brand name. He has also further contended that no enquiry from M/s. Sethi Electronics/ as even directed by the Tribunal in its earlier remand order dated 4-9-2001, had been made by the adjudicating authority, to dispute the correctness of the plea of the appellants that they had purchased some goods i.e. car stereo system/car cassette etc. from that firm, against the invoices. He has further contended that mere non-accountal of purchase of the goods by the appellants did not warrant an inference that the same had been smuggled by them into India for ordering the confiscation of the same and imposing personal penalty on the appellant No. 2.

8. On the other hand, the learned JDR, has simply reiterated the correctness of the impugned order of the Commissioner.

9. The bare perusal of the impugned order shows that after remand, the adjudicating authority did make enquiry from M/s. Expert Trading Company by recording the statement of Shri Rajesh Talwar, Partner of that company, wherein he admitted of having sold 20 pairs of speakers 252 to the appellants vide Bill No. 128, dated 12-5-1998 after having purchased from M/s. Auto & Hardware

Enterprises, Mumbai, through bill dated 18-12-1997. The adjudicating authority has further observed that out of 184 pcs. of speakers, only 40 pcs. had been accounted for, from the statement of Shri Rajesh Talwar, and the purchase of the rest of 144 pcs of speakers had remained unaccounted by the appellants.

Similarly, after recording the statement of Shri Ashok Jai Singh, Prop, of M/s. Jai Singh International, the adjudicating authority has opined that the sale of 4 pcs. of C.D. players to the appellants vide Bill No.1767, dated 23-11-1996, which was imported by that firm vide bill of entry dated 7-9-1996 stands proved and not the rest. Similarly, from M/s. Sakshi Enterprises, the enquiry was got made by the adjudicating authority through Ahmedabad Customs Officers and that firm had admitted the sale of the goods to the appellants (as detailed at serial Nos. 2 and 3 of the show cause notice).

10. But no enquiry after the remand of the case had been conducted from M/s. Sethi Electronics, from whom the appellants purchased certain goods and produced the bills also. The earlier statement of Shri S.P.Singh of that firm, before the remand of the case by the Tribunal, had been again relied upon by the Commissioner for holding that the purchase of the goods from M/s. Sethi Electronics by the appellants, does not stand proved.

11. The adjudicating authority, in my view, has totally lost sight of the fact that the goods in question had not been declared as notified goods under Section 123 of the Customs Act or any other provision of Chapter IV of the Act. These are freely tradable in the country and also available in the open market. Therefore, no presumption regarding the smuggled nature of the goods could be drawn under Section 123 or any other provision of the Customs Act for confiscation of the goods under Section 111(d) of the said Act. The Department was required to prove three ingredients, namely, (i) the goods were of foreign origin; (ii) these were prohibited for import; and (iii) that these were imported contrary to any prohibition or restriction, but had failed to do so. No doubt the goods carried the foreign brand name, but it could not be presumed that these had been smuggled in India for want of any evidence to that effect especially when these are not prohibited goods under any provision of the Customs Act so as to raise presumption about their

smuggled character. The appellants had produced the bills and invoices and disclosed the names of the firm from whom they purchased it. The fact that they had not been able to account for the purchase of the entire goods also did not warrant an inference that these had been smuggled one by them in India from foreign country. No fresh enquiry regarding the non-purchase of the goods by the appellants from M/s.

Sethi Electronics had been even made by the adjudicating authority. The earlier enquiry on the basis of which an earlier order was made by the adjudicating authority against the appellants, could not be again relied upon when that order was set aside by the Tribunal and the case was remanded for fresh decision vide order dated 4-9-2001. In *Kulbhushan Jain v. CC, Delhi*, 1999 (111) E.L.T. 906; *CCE, Allahabad v. Anoop Kumar Agarwal*, 1997 (91) E.L.T. 63; *Hindustan Bearing Corporation v. CC, Makhanlal Gupta v. CC (P), West Bengal*, *Ravi Mittal v. CC, New Delhi*, 2000 (117) E.L.T. 182; *Chandrakant U. Shah v. CC, Mumbai*, 2000 (123) E.L.T. 730; *J.P. Bearing Co. v. CC, Lucknow*, 1999 (109) E.L.T. 538; *Ashok Shamooi v. CC (P), Calcutta*, 2000 (116) E.L.T. 503; *Dhun Darabshan Randeria v. CC (P), Mumbai*, 2001 (136) E.L.T. 1136; and *Bon Ton Sightcare v. CC, New Delhi*, 1993 (64) E.L.T. 239, referred to by the learned counsel, it has been observed by the Tribunal repeatedly that the foreign origin of goods by itself is no evidence to establish the smuggled nature of the goods, when the same are freely marketable by actual user and there is no restriction on their purchase and sale under the Customs Act. Even lack of proper account of purchase and sale of the goods would not be sufficient to raise an inference that the goods were smuggled one. The ratio of the law laid down in all these cases fully and aptly applies to the present case of the appellants.

They had been able to establish the purchase of the seized goods from M/s. Expert Trading Company; M/s. Jai Singh International; and M/s.

Sakshi Enterprises. The fact that the entire purchase of the goods from these firms had not been proved, could not be made basis for raising inference that the non-accounted goods were smuggled goods. No fresh enquiry, as observed above, was conducted from M/s. Sethi Electronics, from whom some of the goods in

question as detailed in the show cause notice, had been purchased by the appellants. No inference or presumption about the smuggled character of the goods for ordering their confiscation under Section 111(d) of the Act, in the light of the facts and circumstances of the case, referred to above, could be legally drawn, as had been done by the adjudicating authority in the instant case. No personal penalty under Section 112(b) of the Customs Act also could be imposed on the appellant No. 2.

13. In view of the discussion made above, the impugned order of the adjudicating authority (Commissioner of Customs - General), cannot be sustained and the same is set aside. The seized goods are also ordered to be released to the appellants. Both the appeals of the appellants are allowed with consequential relief, if any, in accordance with law.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com