Ram Naresh Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-25-2003

Reported in : (2004)(170)ELT89TriDel

Judge : P Bajaj

Appellant : Ram Naresh

Respondent : Commissioner of Central Excise

Judgement :
1. The above captioned appeals have been preferred against the common order-in-appeal, dated 2-7-2001 vide which the Commissioner (Appeals) has affirmed the order-in-original of the Asstt. Commissioner regarding confiscation of the truck under Section 115 of the Customs Act as and applicable to Central Excise Rules and imposition of penalty of Rs. 8,000/- on each of the appellants under Rule 209A.2. The facts are not much in dispute. On 8-12-1995, the Central Excise Officers seized M.S. Bars from the truck No. UHF-9844 at the business premises of the appellants, M/s. Rakesh Kumar Jitendra Kumar. Shri Ram Naresh, appellant, was the driver of that truck which was owned by Shri Brijesh Kumar Shukla, appellant. The truck was also seized as the driver of the truck could not produce any document regarding lawful removal of the goods by the manufacturer, M/s. Vishwakarma Steels & Allied Indus, for delivery at the premises of the buyer, namely, M/s.

Rakesh Kumar Jitendra Kumar. On completion of investigation, the show cause notice was issued to the present appellants. After getting their reply, the Asstt. Commissioner through the order-in-original confirmed the confiscation of the seized goods, but gave an option to the owner to get the same redeemed on payment of redemption fine of Rs. 9,000/-.

He also ordered the confiscation of the truck under Section 115 of the Customs Act, but gave an option to the owner to get it redeemed on payment of redemption fine of Rs. 30,000/-. He further imposed penalty of Rs. 8,000/- on all the present appellants under Rule 209A of the Central Excise Rules, 1944. That order of the Asstt. Commissioner has been affirmed by the Commissioner (Appeals).

3. I have heard both sides. The perusal of impugned order shows that all the three appellants have been penalized under Rule 209A, but the bare perusal of the provisions of this Rule reveals that the same are not attracted to the present case. Shri Brijesh Kumar Shukla, appellant, is the owner of the truck, while Shri Naresh, appellant, is the driver. There is not an iota of evidence on the record to suggest if they had any knowledge about the clandestine removal of the goods by the manufacturer, M/s. Vishwakarma Steel & Allied Indus, for delivery to M/s. Rakesh Kumar Jitendra Kumar. The fact that the driver, Shri Ram Naresh, at the time of seizure of the goods had stated that the owner of the goods did not handed over any document, to him, did not warrant any inference that he had any knowledge about the clandestine removal of the goods without payment of duty by the owner. Shri Brijesh Kumar Shukla, owner of the truck, was not even present at the time of loading/unloading of the goods. Therefore, he could not be said to have any knowledge about the clandestine removal of the goods by the owner.

Even the driver of the truck was under no legal obligation and otherwise had no legal right, to inquire from the owner of the goods about the discharge of the duty liability in respect of the goods, at the time of loading the same. He was only concerned with the transportation of the goods from the premises of the owner to that of the buyer. If the owner of the goods clandestinely removed the same, the Department should have proceeded against him instead of penalizing the driver and the owner of the truck. No seizure of the truck also could be made as the driver did not carry any contraband goods.

Similarly, for want of any evidence about the clandestine removal of the goods by the manufacturer/owner, the appellants, M/s. Rakesh Kumar Jitendra Kumar could not be penalized under Rule 209 A of the Rules.

4. In view of the discussion made above, the impugned order of the Commissioner (Appeals) against the present appellants regarding the confiscation of the truck and imposition of penalties under Rule 209A, cannot be legally sustained and is set aside. Consequently, all the appeals of the appellants are allowed with consequential relief if any, permissible under the law.