Hari Prakash Singh Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-23-2003

Reported in : (2003)(88)ECC525

Judge : P Chacko

Appellant : Hari Prakash Singh

Respondent : Cc

Judgement :

1. By the order impugned in this appeal, the Commissioner of Customs absolutely confiscated computer parts (valued at over Rs. 15 Lakhs) under Section 111(d) of the Customs Act and a truck (from which the computer parts were seized) under Section 115 of the Act. He also imposed a penalty of Rs. 1 Lakh on the appellant under Section 112 (b) of the Act. He imposed similar penalties on three other persons also, who were found as occupants of the truck when officers of Customs had intercepted the vehicle. The Order of the Commissioner is in adjudication of a show-cause notice issued by the department on 1.12.2000 to the appellants, the aforementioned three persons (Jeet Ram Kashyap, Gajendra Singh Yadav and Umesh Kumar Verma) and two others (Hari Ram and Vinod Kumar) proposing to confiscate the goods and the vehicle and impose penalties on the noticees.

2. In the present appeal, the challenge against the order of the Commissioner is on the main ground that the show-cause notice was not served in the manner prescribed under Section 153 of the Customs Act.

It is also alleged by the appellant that the final date of hearing was not intimated by the adjudicating authority. Certain other grounds touching the mertis of the case have also been raised in the Memorandum of Appeal.

It appears from the record of the case and the submissions made before the Bench today that the show-cause notice was issued to the appellant in his Kanpur (U.P.) address. The notice was sent by registered post AD. A copy of the notice was also put up on the Notice Board in the office of the Dy. Commissioner of Customs (Lucknow Division) who issued the notice. Thus, the requirements of Section 153 of the Customs Act were fulfilled in this case. I find no merit in the contra-arguments of the Ld. Counsel for the appellants. However, insofar as his arguments in relation to notice of hearing are concerned, the appellant seems to have a valid point. The relevant part of the impugned order is extracted below: Reminders were sent to Jeet Ram, Gajendra Singh and Umesh Kumar Verma to submit their defence reply and a date of hearing fixed for 20.9.2001 was intimated to them under Regd. post.

Shri Jeet Ram submitted a letter dated 20.9.2001 alongwith a Vakalatnama in favour of Shri Onkar Nath Verma, advocate and submitted that he was unable to attend the hearing on 20.9.2001 due to his ill health and requested for an adjournment. The other two did not appear neither sought any adjournment. Next and the final date of hearing was communicated to all the noticees for 12.10.2001. The intimation letters to Jeet Ram and Umesh Verma were sent through the Central Excise Officers of Kanpur, The letter meant for Umesh Verma was got served upon his elder brother Ram Lakhan on 5.10.2001 under acknowledgement.

The letter to Jeet Ram could not be served as it was reported/gathered that the person had 'left the said house/address. The letter of Gajendra Singh was received back undelivered with the posted remark "the person is living somewhere outstation. Address not known to his family members, hence returned." 4. It appears from the above text that the notice of personal hearing in the case for 20.9.2001 was intimated by registered post to Jeet Ram, Gajendra Singh and Umesh Kumar Verma only. There is nothing in the above text to indicate that any such notice was issued to the appellant. The impugned order says, the final date

(12.10.2001) of hearing was communicated to all the noticees. Such communication to Jeet Ram and Umesh Kumar Verma is said to have been sent through the Central Excise Officers of Kanpur. The communication to Umesh Kumar Verma is said to have been served upon his elder brother, Ram Lakhan under acknowledgement. The order further says that the notices to Jeet Ram and Gajendra Singh could not be served on them. There is nothing in the impugned order to indicate that the notice of hearing for 12.10.2001 was given to the appellant. Thus, apparently, the impugned order has been passed by the Commissioner without affording to the appellant a reasonable opportunity of being heard.

5. Ld. Counsel has submitted that the appellant never received the show-cause notice before the impugned order was passed by the Commissioner in adjudication of the said notice. The notice was received by the appellant only on 7.4.2002 when he was in jail under COFEPOSA detention. He received the Commissioner's order of adjudication a few days later, while he was still in the jail. Copies of the documents relied upon in the show-cause notice were also received by the appellant in jail. Thus, it is no longer the grievance of the appellant that he is not in receipt of the show-cause notice and the relied-upon documents. His surviving grievance, apart from the various grounds raised in the appeal touching the merits of the case, is that no reasonable opportunity of being personally heard was made available to the appellant by the Commissioner before passing the impugned order. I find that this grievance is genuine and requires to be redressed. The Commissioner has to re-adjudicate the case insofar as the present appellant is concerned, in accordance with the principles of natural justice. The impugned order is set aside to the extent it affects the appellant and this appeal is allowed by way of remand, The Commissioner of Customs is directed to readjudicate the case, after giving the appellant a reasonable opportunity of replying to the show-cause notice and being personally heard.