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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-06-2003

Reported in : (2003)(90)ECC545

Judge : A T V.K.

Appellant : Rajender Kumar

Respondent : Commissioner of Customs

Judgement :

1. In this Appeal filed by Shri Rajender Kumar, the issue involved is whether the truck owned by him is liable to confiscation under the provisions of Customs Act.

2. Shri A.C. Jain, learned Advocate, submitted that the truck in question has been confiscated as Misc. goods such as cardamon, medicinal powder, cartons containing spectacles frames, gas cylinders etc. were seized from the truck on 7.4.2001; that as per the finding of the Commissioner in the impugned Order the driver and the cleaner of the truck had admitted time and again that one of the partner of Bharat Transport Company had told them to load some goods for Delhi from a place ahead of Sampurnanagar; that the said partner had also appraised them that evasion of some sales tax was involved in the case. The learned Advocate mentioned that from this version, the Commissioner had given a finding that the driver and cleaner had agreed to load the goods knowingly illicit nature of the goods and made the vehicle liable for confiscation under Section 115(2) of the Customs Act. He contended that the plain reading of Section 115(2) of the Act

discloses in clear terms that finding of knowledge of smuggled nature of the goods is sine qua non for confiscation of the truck; that there is no finding recorded in the impugned Order that owner or his agent had knowledge that the goods undertaken for transport were smuggled one; that as per the finding of the Commissioner that the driver was told only about the evasion of sales tax and not smuggled nature of the goods. He relied upon the decision in the case of Krisha Bahadur Rana v. Commissioner of Customs (P) Mumbai, 2000 (124) ELT 228 (Tri) and Transport Corporation v. Commissioner of Customs, Jaipur, 2002 (148) ELT 909 (Tri) wherein the Tribunal set aside the Order imposing personal penalty in absence of any findings in respect of knowledge of the Appellants or the driver that the goods were contravened.

3. Countering the arguments, Shri S.C. Pushkarna, learned Departmental Representative, submitted that both the driver and the cleaner of the truck who were incharge of the vehicle at the material time had agreed to load the goods knowingly fully well that the evasion of sales tax is involved; that this knowledge goes to show that they were aware of the contravened nature of the goods; that accordingly, the Appellant cannot claim that the goods were loaded in his truck without the knowledge or connivance of his agent.

4. I have considered the submissions of both the sides. It has not been disputed by the Revenue that the truck and the cleaner of the truck were only told about the involvement of evasion of sales tax. There is no finding to show that the driver or the cleaner had any knowledge that the goods being loaded in the truck are smuggled goods. Under Section 115(2) of the Act only that conveyance is liable to confiscation which is used as a means of transport in the smuggling of goods. Section further provides that conveyance shall not be liable to confiscation if the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent if any, and the person incharge of the conveyance. As nothing is brought on record to show that the Driver or the cleaner were knowing about the smuggled nature of the goods, the truck is not liable to confiscation under Section 115(2) of the Customs Act. I, therefore, set aside the confiscation of the truck and allow the Appeal with consequential relief.