Munna Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-06-2003

Reported in : (2003)(90)ECC578

Judge : S Kang, a T V.K.

Appellant : Munna

Respondent : Commissioner of Customs

Judgement :

1. The issues involved in these three appeals, arising out of common order-in-original No. 35/2001, dated 23-11-01 are whether the goods were liable for confiscation and whether the penalties were imposable on the appellants.

2. Briefly stated the facts are that on the basis of information, the Customs officers intercepted a truck No. WB 11/3811 which was parked outside the godown of M/s. Varanasi Indore Roadlines. Shri Munna, proprietor of the Road-lines, was supervising unloading of packets from the truck. The search of the godown and truck resulted in seizure of 17 packets containing foreign origin silk yarn. The officers seized the 17 packets and the truck. The goods were claimed by M/s. New Paradise Silk Cooperative Society Ltd. on 2-8-2000. Shri Mohd. Hanif Ansari, Chairman deposed in his statement dated 11-8-2000 that while attending EXPO at Calcutta in February, 2000, he met one Mr. Binoy representative of M/s.

Fairdeal Enterprises and Delhi party M/s. Kunal International and asked him to supply raw silk for job work on job charges basis. He, further, stated that M/s. Binoy intimated to him on 8-7-2000 that the raw material will be sent on 20-7-2000 and he received the billty and challan of the goods on 27-7-2000. The address of M/s. Kunal International at 85-A, Jamrudpur, Greater Kailash, Part-I was found closed for the last one year. Similarly no office in the name of M/s.

Kunal International was found to be located at Girish Chandra Avenue, Calcutta. Shri Binoy Majumdar, Managing Director of Fairdeal Enterprises in his statement dated 16-8-2000 and 17-8-2000, stated that he had never met, nor talked nor made any correspondence with Mohd.

Hanif Ansari of New Paradise Silk Cooperative Society and he had not asked anybody or Hanif Ansari to claim the ownership of the goods. The Commissioner, under the impugned order, has ordered absolute confiscation of 17 bales of foreign origin silk yarn valued at Rs. 15,37,200/- and imposed a penalty of Rs. 50,000/- on Munna of Varanasi Indore Roadlines and penalty of Rs. 25,000/- each on Hub Narain Tiwari and Naushad Khan under Section 112(a) of the Customs Act. The Commissioner has also appropriated the security amount of Rs. 50,000/- taken from Hub Narain Tiwari for provisional release of the truck.

3. Shri M.P. Singh, learned Advocate, appearing on behalf of Mohd.

Ansari submitted that the impugned goods were imported by M/s. Kunal International and after clearing the same from Customs, were sent to him on job work basis. On a query from the Bench as to whether the goods in question has been purchased by them or they are the owners of the goods, the learned Advocate replied that they had not purchased the goods as the same had been sent to them on job work basis, being the master weaver. The learned Advocate, further, mentioned that the Commissioner has wrongly confiscated the goods in question as the burden to prove the smuggled nature of the goods lies on the department; that they are aggrieved person as the goods had been consigned to them and as consignee they have the right to the goods.

4. Countering the arguments Shri Kumar Santosh, learned Senior Departmental Representative, submitted that as the goods in question are not owned by Mohd. Hanif Ansari, he cannot claim the ownership of the goods; that he is not an aggrieved party.

5. After considering all the submissions of both the sides, we agree with the learned Senior Departmental Representative that Mohd. Hanif Ansari, being not the owner of the goods, cannot challenge the confiscation of the impugned goods. He has not established his right to the goods as he has neither imported the goods from abroad nor he has purchased the goods from the importer. In absence of any such evidence, they cannot be treated as an aggrieved party. It has been held by the Supreme Court in the case of Northern Plastics Ltd. v. Hindustan Photo Film Manufacturing Co. Ltd. - 1997 (91) E.L.T. 502 (Supreme Court) that person aggrieved should have a direct legal interest in the goods involved in the Adjudication process. "The words 'person aggrieved' do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. 'A person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something." As in this case, no evidence has been brought on record to show that Mohd. Hanif Ansari is the owner of the goods or the goods were seized from his possession or from his premises, he cannot be a 'person aggrieved.' Accordingly, the appeal filed by him is rejected.

6. Shri M.P. Singh, learned Advocate submitted on behalf of Munna that Munna is only proprietor of Varanasi Indore Roadlines against whom provisions of Section 112(b) of the Customs Act cannot be invoked; that the provisions of the said section can be invoked only when the person concerned knows that the goods are liable to confiscation under Section 111 of the Act; that the impugned order does not indicate as to what was the act of omission or commission committed by Munna to make him liable for penalty. He also mentioned that even according to the finding of the Commissioner in the impugned order Munna was only involved in unloading of the smuggled goods, 7. Shri K.K. Anand, learned Advocate, appearing on behalf of Shri Hub Narain Tiwari submitted that the appellant - Tiwari

had no knowledge that silk yarn loaded in his truck was smuggled one; that it has been held in number of cases such as Manjit v. Commissioner of Customs - 2001 (127) E.L.T. 153 that the truck cannot be confiscated and penalty cannot be imposed if there are no evidence that owner or driver of the truck had knowledge or belief that the goods being carried by the truck were smuggled one; that from the beginning the Tiwari stated in his statements that when he reached the office of Ma Durga Roadlines after loading railway crank shaft two persons who identified themselves as Khan and Suresh Dubey asked him to transport the soot to Varanasi; that when he asked for challan and billty, those persons told him that there was no tax on soot and their man would accompany him carrying the relevant papers on truck; that he transported 17 bales of soot to earn some extra money under bona fide belief that the goods were not taxable and the man escorting the bales was having relevant papers. He also referred that Commissioner himself has given his specific finding in the impugned order that "it cannot be said that the four boxes containing the crank shaft are used to conceal the silk yarn." Learned Advocate submitted that in view of these facts, neither the truck is liable for confiscation nor any penalty is imposable on Hub Narain Tiwari.

8. Opposing the arguments, learned Senior Departmental Representative submitted that the conduct of Munna goes to show that he was aware of the smuggled nature of the goods; that when the Customs Officers reached the Varanasi Indore Roadlines, Munna repeatedly tried to run away and one of the Customs officers had to fire a warning shot from his service revolver to stop him; that when the officers were in the process of taking the truck to the Customs office, Varanasi, a Police jeep arrived there with 7 to 8 persons of whom were in uniform; that one of the Police officer, who was in uniform, tried to snatch the service revolver of the Customs officer and even opened the door of the Government Gypsy letting three apprehended persons to fly away from the spot. The learned Senior Departmental Representative, further, submitted that the very fact that Hub Narain Tiwari did not take the papers relating to the goods goes to show that he was knowing that the goods were of smuggled nature; that further he had placed the boxes in the front of the truck and the crank shafts were kept to conceal the boxes and that this has been done intentionally as the crank shaft were initially loaded first in the truck. Learned Senior Departmental Representative, therefore,

submitted that the circumstantial evidence clearly show that both Munna and Hub Narain Tiwari were aware of the smuggled nature of the goods and as such the Commissioner was justified in confiscating the truck and imposing penalties on both these appellants.

9. We have considered the submissions of both the sides. Penalty under Section 112(b) of the Customs Act can be imposed on any person who acquires possession of or is anyway concerned in carrying, removing depositing, harbouring keeping concealing or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111. No evidence direct or indirect has been brought on record by the Revenue to prove that both the Appellants Munna and Tiwari knew or had reason to believe that the goods dealt with by them were liable to confiscation under Section 111 of the Customs Act. The act of running away from the scene by Munna does not go to show that he was aware of the illicit nature of the goods. This may create a suspicion against him but suspicion cannot take place of the evidence. Similarly, there is no evidence against Hub Narain Tiwari to show that he was aware of the implicit nature of the goods at the time he agreed to carry the same from Calcutta to Varanasi. The knowledge cannot be attributed to him merely because he did not take the papers relating to goods; that he had stated in his first statement that he was told that a man would accompany him along with the papers relating to bales of the yarn. The knowledge of the smuggled nature of the goods cannot be also attributed to him on the ground that he did not declare the same at Naubatpur Check Post. In absence of any evidence of knowledge about the smuggled nature of the goods, we hold that neither the truck is liable to confiscation nor any penalty is imposable on both the appellants Munna and Hub Narain Tiwari. We, therefore, set aside the penalties imposed on both of them.

All the three appeals stand disposed of in the above terms.