Commissioner of Central Excise Vs. Shyam Sunder Sharma

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-24-2003

Reported in : (2004)(163)ELT375TriDel

Judge : M T K.D.

Appellant : Commissioner of Central Excise

Respondent : Shyam Sunder Sharma

Judgement :

1. This is Revenue's appeal against order-in-appeal passed by the ld.Commissioner (Appeals), Allabahad. A vehicle was intercepted by Customs officers, Varanasi on 5-10-2000 which resulted into recovery of silk yarn of foreign origin. The detailed particulars of the goods are as under :- The driver produced no document in respect of silk yarn of foreign origin. Under the reasonable belief that, the said 81 kg. of twisted silk yarn has been made out of smuggled silk yarn, which had been brought into India in violation of the provisions of Section 11 of the Customs Act, 1962 read with Section 3 of Foreign Trade (Development and Regulation) Act, 1992, the same was seized under Section 110. The other yarn being used to conceal the said silk yarn was also considered to be liable for confiscation under Section 119 and hence seized under Section 110 of the Act. The Maruti Van used for transportation was also seized. The bills produced to show the licit acquisition of the silk yarn were discarded as being an after-thought. In the adjudication proceedings, the silk yarn of foreign origin was ordered to be absolutely confiscated. The Indian origin yarn was also confiscated being used for

concealment of contraband goods. The in-dian origin goods were permitted to be redeemed on payment of a fine of Rs. 25,000/-. A penalty of Rs. 10,000/- has been imposed on Sh. Shyam Sunder Sharma who is respondent in the present appeal, filed by the Revenue, against the impunged order-in-appeal passed by the Commissioner (Appeals), who set aside the order-in-original.

3. In the grounds of appeal, challenging the impunged order-in-appeal, it has been pleaded as under :- (1) The Commissioner (Appeals) has erred in ignoring the fact that the documents showing silk yarn in twisted form i.e. 81 Kgs. packed in 2 bales were not produced at the time of interception of the vehicle, but were produced after about 2 months. Moreover, on 4-10-2000, the day of seizure itself, Shri S.S. Sharma, owner of M/s. Mahalakshmi Enterprises, Jaitpura, Varanasi informed the officers that he purchased silk yarn in twisted form from Shri Hari Shankar, whereas Shri Hari Shankar straightaway refused to have done any business in silk yarn.

(ii) The Commissioner (Appeals) has erred in not considering the absence of any identification mark to link the goods with those described in the documents.

4. The import of silk yarn in twisted form has not been alleged in the show-cause notice. The show-cause notice urges that, the twisted silk yarn wrapped in gunny bags were made out of smuggled silk yarn. In other words, the allegation is not of smuggling of twisted silk yarn but the raw material i.e. untwisted silk yarn. It is obvious that, before the twisted yarn came into the possession of the persons from whom it has been seized, the show-cause notice itself alleges that, the same has been made out of smuggled silk yarn. So, if the goods under seizure have undergone a process of twisting in the country, the smuggling process cannot be fastened on to the twisted silk yarn. If at all the smuggling is involved, it should be attributed to the untwisted yarn as per the show-cause notice. The show-cause notice does not allege that, the persons from whom the seizure has been made have themselves smuggled the silk yarn and subjected to twisting. They were only in possession of twisted yarn which was made of foreign origin silk yarn.

5. In order to hold the goods of foreign origin liable for confiscation, a reasonable belief is required to the effect that the goods are smuggled. The import of silk yarn

is legally permissible.

Therefore, the burden is on the department to establish that the goods in question are liable to confiscation and it is not for the appellants to prove the negative. The fact that the seller of goods has denied any dealing with the appellant by itself cannot lead to a conclusion that, the appellant himself was involved in smuggling. There is no worthwhile evidence to link the seized goods with illegal importation of untwisted silk yarn and much less the linkage of the appellant with the said activity. The statements without any tangible, collateral evidence have no evidential value and cannot be used against the appellant.

6. I, therefore, hold that the order passed by the ld. Commissioner (Appeals) is sustainable and the appeal filed by the Revenue being devoid of merits is hereby rejected.