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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-05-2004

Reported in : (2004)(166)ELT131Tri(Mum.)bai

Judge : S T S.S.

Appellant : Vittal Utekar

Respondent : Commissioner of Customs

Judgement :
1. These three appeals have been filed against the orders of penalty arrived at by the Lower Authority under the provisions of Section 114(i) of the Customs Act, 1962 on them by very same order.

2. (a) Appellant in appeal No. C/122/97 is one Shri Bhavesh D.Sonchhatra on whom the penalty of Rs. 1,00,000/- has been imposed on him coming to the following findings - "As regard the role of Shri Bhavesh D. Sonchhatra, he admitted that he was export incharge of M/s. JAC Enterprises at the material time.

Shri Sunil Mehta of M/s. S.R. Shipping in his statement stated that Shri Bhavesh D. Sonchhatra of M/s. JAC Enterprises volunteered that one of his staff would complete the Customs examination formalities.

Shri Bhavesh also admitted in his statement that one of the employees of CHA M/s. JAC Enterprises Shri Vithal Uttekar changed the mode of clearance from 'SELF' to CHA (M/s. JAC Enterprises). As Shri Bhavesh was the Export Incharge of M/s. JAC Enterprises he had played a major role in the smuggling of mandrax tablets because with his knowledge and under his instructions the other employees of M/s.

JAC Enterprises attended to the work of Customs examination of the consignment from which mandrax tablets were recovered. Hence a major penalty is required to be imposed on Shri Bhavesh D. Sonchhatra for his role in this case." (b) Appellant in Appeal No. C/127/97 is Shri Vittal Uttekar on whom a penalty of Rs. 50,000/- has been imposed after coming to the following finding - "The investigation also proved that Shri Vittal Uttekar an employee of M/s. JAC Enterprises crossed out SELF in the column of Shipping Bill and wrote particulars of CHA M/s. JAC Enterprises in his own handwriting. He admitted in his statement that any change in the Shipping Bill would require permission from Asstt. Commissioner of Customs, yet he changed the same without obtaining the requisite permission. This shows his mala fide intention and his involvement in the case. He is therefore liable to penal action Under Section 114(i) of the Customs Act, 1962." (c) Appellant in appeal No. C/128/97 is one Shri Ashok N. Borge on whom a penalty of Rs. 50,000/- has been imposed after coming to the following findings - "Shri Ashok N. Borge an employee of M/s. JAC Enterprises admitted that he had attended to the work of Customs examination and clearance of the consignment even though the Shipping Bill was passed under 'SELF'. The mode of clearance from 'SELF' to CHA in the Shipping Bill was changed by Shri Vittal Uttekar a Customs Clerk of M/s. JAC Enterprises, but he attended to the work relating to Customs examination and clearance without bringing this fact to the notice of the Customs Appraiser. Hence his involvement in this case is proved and he is liable for penal action Under Section 114(i) of Customs Act, 1962." (d) The goods found liable for confiscation were consignment of Mandrax tablets in an Export Shipment of furniture. The Custom House Agent was exonerated by the Commissioner, the Shipping Agent i.e.

M/s. S. R. Shipping Agency by the Tribunal vide its order [2002 (142) E.L.T. 364] by the Tribunal and main player is absconding.

3. After hearing the ld. Advocates and the DR and considering the material and the role found by the Commissioner as regards the present appellants, it is found - (a) The findings do not show nor is any material available on record to show any specific knowledge about the contents of Mandrax tablets being packed in the consignment of furniture on part of these appellants. They arc Export incharge and clerks of the CHA and mode of clearance was changed from 'self' Shipping Bill to 'CHA' i.e. the 'CHA' would thus be entitled to attend the examination and customs clearance formalities would itself indicate that these employees of the CHA firm had no 'mens rea', if they knew that Mandrax was concealed in the consignment, there was no reason for them to have changed the mode from 'Self' i.e. Exporter handling the consignment to 'CHA' mode, so as the consignment could get traced back to them, It is pleaded on their behalf that they were not connected with or aware of the Mandrax and that is accepted.

There is nothing therefore on record to bring up the penal consequences on the appellants under Section 114(i) of the Customs Act, 1962.

(c) Since the commission of the acts conducted by these persons, per se do not render the goods liable to confiscation, the penalty under Section 114(i), cannot be upheld.