Commissioner of Central Excise Vs. Angan Prints

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-13-2004

Reported in : (2004)(94)ECC137

Judge : M T K.D.

Appellant : Commissioner of Central Excise

Respondent : Angan Prints

Judgement :

1. This appeal from the revenue is directed against the impugned order-in-appeal passed by the learned Commissioner (Appeals).

2. In the facts of the case it is narrated that shop premises of the respondents M/s. Angan Prints were searched. On search 2603 sarees pcs (processed man made fabrics) valued at Rs. 3,88,168/- were seized on the grounds that the respondents could not produce any duty paying documents i.e. invoices issued by the processors evidencing payment of Central Excise duty. The seizure was made under the reasonable belief that the said goods were offending goods, liable for confiscation. In the subsequent adjudication it was held that the proprietor had admitted to have get the grey fabrics processed from certain processors and no duty was paid on such processed fabrics and there are no back-ups of any bills and invoices or duty paying documents.

3. On this thin and flimsy evidence the adjudication proceedings culminated in confiscation of seized fabrics, imposition of redemption fine and various penalties on the respondents. These were, set aside on appeal. Hence the instant appeal. Heard both sides.

4. In the revenue appeal, the charges leveled in the show cause notice are merely repeated without countering the sound and legal basis adopted in the impugned order-in-appeal. In the appeal only bald allegations are levelled without bringing on record any hard evidence to show the nexus of seized goods with any non duty paid fabrics removed from any particular processor. Unless and until the contraband nature of the seized goods is established the action to confiscate, and demanding duty etc. can not be sustained. It must be remembered, that as correctly analysed by the learned Commissioner (Appeals), the liability to pay excise duty on processed fabrics is on the person who actually undertakes the job of doing the processing work. In the entire case, the department, despite vast investigating machinery at its command has failed to locate such person and therefore fastened the liability on the respondents without any legal basis. In this connection I quote from the orders of the learned Commissioner (Appeals) "I(a) the seized fabrics 2603 sarees valued at Rs. 3,88,168/- should not be confiscated under Rule 209/173 Q (i) of the C.Ex.Rules,1944.

(b) C.Ex. duty amounting to Rs. 77,633/- on the processed MMF subsequently paid by them be not confirmed under Rule 9 (2) of the C.Ex. Rules, 1944.

II (a) I have carefully considered the finding of the JAC, I can not agree with him that the silence on the part of M/s. Angan Prints to disclose the actual processors name would visit t hem with a charge; it can only lead to strong presumption or suspicion about the conduct but not enough to bring home the fact that goods were processed in the jurisdiction of the JAC. (b) There is no provision in the Central Excise Law transferring the onus on to the purchaser to prove the licit duty paid possession of the material like Section 123 of the Customs Act 1982. The onus is on the investigation and the officers to determine when and where the goods were processed and how they reached the premises where they were seized. When in the 2nd para of the OIO it is accepted that the proprietor stated that he is purchasing processed fabrics, the fabrics under seizure could be such purchased fabrics, this is required to be ruled out by evidence.

(c) In that view of the matter, I would not find any evidence worth its name to form a reasonable belief to lead to seizure of the goods who is admittedly in the 'shop', a premises of a trader of similar goods who is admittedly purchasing processed fabrics much less find and reason to support its confiscation of the same under the C. Ex.

Law. I would therefore set aside the order as regards confiscation and consequently the redemption fine.

III (a) Now, when I consider the JAC's finding regarding the liability of duty imposed on the traders firm in absence of declaration under Notification No. 27/92 (NT) dated 9.10.92, I shudder wit h fear, if this be the law, then all persons possessing any excisable goods in India could be held responsible for penalty and duty liability for possessing any kind of Indian manufactured goods especially fabrics since all goods are covered by C. Ex. And who has, or maintains duty paying documents at all times, Section 12 of the act notwithstanding? (b) Mercifully, the larger bench of five judges in the case of Ujjagar Prints and Ors. v. UOI and Ors. 1989 (20) ECR 129 (SC) at para 30 have held - "30. In the case of processing houses, they become liable to pay excise duty not because they are the owners of the goods but because they cause the 'manufacture of the goods." And in para 30 B the purpose of the declarations under Rule 174A was recorded. When processor has been held to be the manufacturer, duty liability is to be on the processor and not the trader (i.e. the raw material supplier or recipient of the processed fabrics) as it being made out in the impugned OIO here. This liability can not be discharged by any one else voluntarily or otherwise. Therefore the actual processor is to be located and the fabrics have to be proved to be non duty paid. Being bound to follow the law as laid by the Supreme Court, I can not accept duty from anybody else and / or hold the 'firm' liable for payment of duty which the law does not permit.

Any such payments made can not be duty and are required to be returned. In view of the law laid down by the larger bench of the Supreme Court the decisions relied upon by the JAC are of no held me." 6. I fully endorse the above findings and in the absence of any worthwhile counter to these findings I hold that the revenue appeal is without basis. Hence the same is rejected.