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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-21-2004

Reported in : (2004)(95)ECC253

Judge : A T V.K., P Chacko

Appellant : Beer Auto Stores and anr.

Respondent : Cc

Judgement :

1. Appeal No. 580/2001 filed by M/s Beer Auto Store is against the order of the Commissioner of Customs confiscating 18,716 Ball Bearings valued at Rs. 30,84,100 under Section 111(d) of the Customs Act with option to redeem the goods against payment of fine of Rs. 10 lakhs and imposing on the appellants a penalty of Rs. 3 lakhs under Section 112 of the Act. The other appeal filed by Shri Taranjeet Singh is against a penalty of Rs. 3 lakhs imposed on him by the Commissioner under Section 112 of the Act.

2. Officers of Customs had conducted search of the shop and godown premises of M/s Beer Auto Store in the presence of two independent witnesses and Shri Taranjeet Singh who introduced himself as the Proprietor of the business. The search of the godown resulted in the recovery of 39 packages containing 18,716 Ball Bearings with foreign markings, collectively valued at Rs. 30,84,100. Shri Taranjeet Singh could not produce any documentary evidence of legal acquisition and possession of the goods. The officers seized the goods under Section 110 of

the Customs Act on the basis of their belief that the goods had been smuggled into India and hence liable to confiscation under Section 111 of the Act. A statement of Shri Taranjeet Singh was recorded under Section 108 of the Act, wherein he stated that he had purchased the foreign origin ball bearings from one Shri Sanjay who came to his shop on his own and offered the goods to him; that Shri Sanjay had sold the ball bearings to him without any bill; that he did not know the whereabouts of Shri Sanjay nor any means of contacting him; that he had indulged in the activity of trading in foreign origin ball bearings to earn some fast buck as advised by his friend; that the seized ball bearings had been purchased by him against cash payment made to Shri Sanjay. The officers subsequently searched the residential premises of Shri Taranjeet Singh but could not recover any incriminating material.

They also conducted scrutiny of a Statement of Accounts obtained from the bankers (Central Bank of India) of M/s Beer Auto Store, which indicated that payments were being received in cash and deposited into the account of M/s Beer Auto Store. The officers also recorded a statement of Shri Pritpal Singh, father of Shri Taranjeet Singh. Shri Pritpal Singh stated that he and his brother Shri Lakhbir Singh were partners of the firm namely, M/s Beer Auto Store; that they wanted to wind up the firm; that his son Shri Taranjeet Singh was running the shop during the search conducted by the Customs officers; that some goods had been seized from the godown of his own Shri Taranjeet Singh; that he was not aware of any such godown being owned by his son; that he had no role in the business of M/s. Beer Auto Store and had no interest in the shop for the last 5-6 years and that he did not know anything about the foreign origin ball bearings seized from the godown of Shri Taranjeet Singh. Shri Pritpal Singh also submitted some documents mentioned in his statement. Shri Lakhbir Singh, in his statement, corroborated whatever had been stated by his brother Shri Pritpal Singh. He also produced some documents mentioned in his statement. From the results of investigation, it appeared to the Department that Shri Taranjeet Singh had acquired possession of smuggled foreign origin Ball Bearings collectively valued at Rs. 30,84,100 with the knowledge/belief that the goods were liable to confiscation under Section 111(d) of the Customs Act. Accordingly, the Department issued a show-cause notice to Shri Taranjeet Singh and M/s Beer Auto Store proposing to confiscate the goods and imposing penalties on the noticees. Upon receipt of the show-cause notice, the parties through their Counsel, cross-examined four persons, namely,

(1) Shri Asha Ram, Panch witness

(2) Shri Kaptan Singh, Investigating Officer

(3) Shri Shyam Milan, Panch witness, and

(4) Shri Rajan Mathur, Superintendent of Customs. Subsequently, a reply to the show cause notice was submitted, wherein the appellants denied the allegations of the department and claimed that the statements of Shri Taranjeet Singh had been obtained under duress and hence could not be relied upon and that the same was retracted in the first instance. The appellants also contended that as the ball bearings were not notified goods, the burden of proof of smuggled nature of the goods lay on the department but the same had not been successfully discharged. It was also pleaded that the valuation of the goods was arbitrary. After hearing Counsel for the appellants, the Commissioner passed the impugned order.

3. Heard both the sides. The Counsel for the appellants submitted that the ball bearings were seized by the officers of Customs from the godown of M/s Beer Auto Store; that, as the ball bearings were not notified goods under Section 123 of the Customs Act, the burden was on the department to establish that the goods had been smuggled into India by the appellants; the department did not adduce any evidence to prove the alleged smuggled nature of the goods; that some of the seized ball bearings had been purchased from the open market as evidenced by the bill issued by the sellers and the rest had been purchased through brokers against cash payment as evidenced by vouchers; the bills and vouchers produced by the appellants were not taken into account by the Commissioner; that Shri Taranjeet Singh had retracted his statements on 5.2.2000 in his letter submitted to the Commissioner of Customs; that this retraction was arbitrarily rejected by the Commissioner; that the reliance placed by the Commissioner on the retracted statement of Shri Taranjeet Singh was illegal; that the valuation of the goods done by the Commissioner was arbitrary and illegal as it was done on the basis of

market enquires held behind the back of the appellants.

4. The DR submitted that the bills produced by the party were not correctable to the seized goods. He referred to copies of three bills dated 19.6.96, 23.11.96 and 13.6.96 (pages 134 to 136 of the paper book filed by the appellants) and wanted these documents to be cross-checked with Annexure-A to the panchnama dated 4.2.2000 whereunder the goods in question were seized. Whereas the description of the seized ball bearings was given as "HCH 6202-Z", "HCH 6201-Z" etc., the bills described the goods covered thereunder, as "6202 Ball Bearing", "6201 Ball Bearing", etc. On this basis, the DR submitted that the goods covered by the bills were different from those seized under the Panchnama. It was further submitted that all the bills were of the year 1996 when Shri Taranjeet Singh had no connection with the business of M/s Beer Auto Store. Shri Taranjeet Singh had stated in February 2000 that he had started the business only one and a half years back. The DR also contested the claim of the Counsel that Shri Taranjeet Singh had retracted his statement date 4.2.2000 on 5.2.2000 in a letter submitted to the Commissioner of Customs. The DR referred to copies of a few documents filed by the appellants (pages 36, 37, 138 and 139 of the paper book filed by the appellants). Page 36 of the paper book is the English translation of a letter (in Hindi) of Shri Taranjeet Singh's mother to the Commissioner of Customs. This letter says that Shri Taranjeet Singh had been detained by the Customs Officers throughout the night of 4/5 February, 2000 and had been forced to write a false statement. The letter had allegedly been sent to the Commissioner through a courier by name "Vayu Seva". Page 37 of the paper book is a copy of the consignment note issued by the courier. At page 138 is a letter dated 52.2000 addressed by Shri Taranjeet Singh to the Commissioner of Customs. Page 139 is a photocopy of the courier's consignment note. This consignment note dated 3.9.2001 shows Vivek Sood, Advocate as the consignor and the Commissioner of Customs as the consignee. The DR submitted that there was no evidence on record to show that the letter dated 5.2.2000 had been served on the Commissioner. Shri Taranjeet Singh had admitted that the goods seized by the officers were smuggled goods. His confessional statement was never retracted by him. Therefore, DR argued, it was not necessary for the Department to search for any further evidence of the smuggled nature of the goods.

5. We have carefully considered the submissions. The Panchnama dated 4.2.2000, whereunder the ball bearings in question were seized by the officers of Customs, clearly indicated than 39 packages containing 18,716 ball bearings of foreign origin collectively valued at Rs. 30,84,100 were recovered from the godown of Taranjeet Singh in his presence. The Panchnama says that it had been on the spot and had been read out to Shri Taranjeet Singh in vernacular. The Panch witnesses were cross-examined before the adjudicating authority. Both the witnesses confirmed the recovery and seizure of ball bearings by the Customs officers from the godown of Shri Taranjeet Singh. Shri Rajan Mathur, Superintendent of Customs, who recorded the statement of Shri Taranjeet Singh, was also cross-examined before the Commissioner. He stated that he had recorded the statement of Shri Taranjeet Singh on 4.2.2000 in his shop (Beer Auto Store). He denied that Shri Taranjeet Singh was detained in the Customs House and his statement recorded in the night of 4/5 February, 2000. After perusing the record of cross-examination of the panch witnesses and the Customs officers, we do not find any inconsistency between their depositions and the facts alleged in the show cause notice. Shri Taranjeet Singh in his statement dated 4.2.2000 clearly admitted that he had purchased the ball bearings from one Shri Sanjay and that, as the goods were smuggled goods, Shri Sanjay had not issued any bill. Shri Singh further admitted that the ball bearings which were recovered from his godown by the customs officers were of foreign origin. The appellants have claimed that this confessional statement had been retracted on 5.2.2000 itself. We have not found any evidence whatsoever of any such retraction having been made by Shri Taranjeet Singh before the Commissioner of Customs on 5.2.2000 itself. It has been stated by the appellants' Counsel that a copy of the letter dated 5.2.2000 of Shri Taranjeet Singh retracting his earlier statement was sent to the Commissioner through courier on 3.9.2001. Counsel has also complained that the letter dated 5.2.2000 was not considered by the Commissioner. These submissions do not serve any purpose. The consignment note dated 3.9.2001 issued by the courier cannot be accepted as conclusive proof of the letter dated 5.2.2000 of Shri Taranjeet Singh having been received by the Commissioner. Even if it is assumed that the letter of Shri Taranjeet Singh was received by the Commissioner through courier, retraction of the confessional statement dated

4.2.2000 can be held to have been made only on the date of receipt of the courier dispatch. This date, in any case, is after more than one and a half years from the date of the confessional statement and such a belated retraction requires to be rejected as bereft of bona fides. Therefore, in our considered view, the Commissioner has not erred in relying on the confessional statement dated 4.2.2000 of Shri Taranjeet Singh and holding that he had acquired possession of smuggled ball bearings of foreign origin in contravention of provisions of the Customs Act. Admittedly, ball bearings were not notified under Section 123 of the Customs Act, and, of course, the burden was on the department to show that the seized goods had been smuggled into India by the appellants. Foreign origin of the goods was indicated by the foreign markings on the goods. This is also a fact admitted by Shri Taranjeet Singh. He could not establish any lawful acquisition of the goods. It was admitted by Shri Taranjeet Singh that the entire quantity of ball bearings was purchased by him from one Shri Sanjay against cash payments without vouchers. In view of this admission, the copies of vouchers produced by the appellants cannot be accepted as relevant. It is also pertinent to note that the whereabouts of Shri Sanjay were not known to Shri Taranjeet Singh and that the latter had no means of contacting the former. We are therefore, unable to understand as to how Shri Taranjeet Singh managed to obtain the vouchers which were claimed to have been issued by Shri Sanjay. Shri Taranjeet Singh, in his confessional statement, did not claim that any of the ball bearings had been purchased from the open market. In view of this admission, the bills produced by the appellants are also irrelevant. We, therefore, hold that the department has succeeded in proving that the appellants illegally acquired smuggled ball bearings of foreign origin in contravention of provisions of the Customs Act.

The appellants cannot be heard to say that they had no knowledge or belief that such goods were liable to confiscation under Section 111(d) of the Customs Act. We, therefore, uphold the confiscation of the goods under Section 111(d) of the Act.

6. The Commissioner has imposed a fine of Rs. 10 lakhs under Section 125 of the Customs Act. The proviso to Section 125(1) of the Act prescribes the maximum limit of fine that may be imposed in lieu of confiscation of any goods imported in

violation of the Act. This limit is the market price of the goods less the duty chargeable thereon. The Department determined the market value of the goods as Rs. 30,84,100.

This was based on certain market enquires. It is not disputed that those enquiries were conducted without notice to the appellants and no material pertaining to such enquiries was supplied to them at any stage of the proceedings. In the impugned order, the Commissioner has not indicated any nexus between the redemption fine of Rs. 10 lakhs and the market value of the goods. The determination of redemption fine without giving any opportunity to the parties to contest the results to the market enquiries conducted by the Department is certainly violative of the principles of natural justice. We, therefore, set aside the redemption fine imposed by the Commissioner. The adjudicating authority will redetermine the quantum of fine after supplying the market enquiry report to the party and giving them an opportunity to contest it. The parties shall also be personally heard on the issue.

7. As regards the penalties imposed by the Commissioner on M/s Beer Auto Store and Shri Taranjeet Singh under Section 112 of the Customs Act, we note that the Commissioner has imposed the penalties for the omissions and commissions of the parties which rendered the goods liable to confiscation. Illegal acquisition of smuggled ball bearings of foreign origin is a fact admitted by Shri Taranjeet Singh and found by the adjudicating authority. We have also affirmed this finding of the Commissioner. Such acquisition rendered the goods liable to confiscation under Section 111(d). Shri Taranjeet Singh was expected, in law, to be aware of this legal position. Shri Singh, however, acquired possession of the goods not for himself but for M/s Beer Auto Store. Hence, Beer Auto Store was liable to be penalized under Section 112 of the Act. However, a penalty of Rs. 3 lakhs, in our view, is too high to match the offence. In the facts and circumstances of the case, we reduce the penalty on Beer Auto Store to Rs. 1 lakh.

8. The Commissioner has imposed a penalty of Rs. 3 lakhs on Shri Taranjeet Singh also. There cannot be any such separate penalty on the proprietor of Beer Auto Store. The penalty on Shri Taranjeet Singh is, therefore, not sustainable.

(b) Redemption fine of Rs. 10 lakhs is set aside and the Commissioner is directed to redetermine the quantum of fine in terms of this order; (e) Appeal No. 580/2001 is disposed of in terms of (a), (b) and (c) above;