Alok Gupta Vs. Cc

Alok Gupta Vs. Cc

SooperKanoon Citation : sooperkanoon.com/35147

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-04-2004

Reported in : (2004)(94)ECC241

Judge : K Usha, N T C.N.B.

Appellant : Alok Gupta

Respondent : Cc

Judgement :

1. This appeal of Shri Alok Gupta is directed against the imposition of penalty of Rs. 2,50,000 upon him under Section 112 of the Customs Act 1962.

2. The brief facts leading into imposition of penalty are like this.

Certain imports of glassware were made in March 2001 in the name of M/s. Essem Enterprises, F-440, Kanpur, New Delhi. Two bills of entry being Nos. 238513 and 238522 both dated 14.3.2001 were filed in the inland Container Depot, Tughlakabad, New Delhi for the clearance of these goods. The appellant went to the customs in connection with the clearance of the goods. Apprehending that the goods have been under valued, customs authorities questioned the appellant and recorded a statement under Section 108 or the Customs Act, 1962. The appellant explained that he was a trader in both indigenous and imported crockery and he has arranged the import of the goods, alonwith Shri Rohit Kumar who is the Proprietor of M/s. Essem Enterpries. As regards details of the import, he stated that the goods are of Indonesian origin and that the arrangement was made through Hong Kong. With regard to the value of the goods he stated that under the arrangement, import invoice was to indicate only 2/3rd of the actual price and the remaining 1/3rd price was being paid in Hong Kong through his Uncle Shri Roshan Lal Gupta, who is a Hong Kong passport holder. This statement was recorded on 21.3.2001. After further inquiries, a show cause notice dated 23.10.2001 was issued proposing confiscation of goods and imposition of penalties and demanding differential duty upon enhancement of the value of the goods. The impugned order has been passed in those proceedings, The Commissioner has passed the order based on the confession/disclosure made by Shri Alok Gupta in his statement, despite the fact that the appellant had retracted his statement.

3. In the present appeal, the submission is that the importing firm belongs to another person Shri Rohit Kumar and that the appellant was only assisting him since Rohit Kumar is a semi educated person. It is the submission that since he is not the Importer, Imposition of penalty was not justified. It is further contended that since the statement given to the custom authorities had been retracted on 12.4.2001, no penalty should have been imposed based on the statement.

4. As against the aforesaid submission on behalf of the appellant, learned SDR has pointed out that it is clear from the case records that the under invoicing of the goods was arranged by the appellant and, therefore, imposition of penalty was full justified. He maintained that the retraction of the statement has no value since the detailed facts disclosed therein would show that a stranger to the arrangement would not be aware of the particulars transaction disclosed in the statement.

According to the learned SDR retraction was made only to avoid the consequences flowing from under valuation.

5. We have perused the records and have considered the submissions made by both sides. We find no justification to interfere with the order.

Even in the present appeal, the appellant admits that the Proprietor of the firm is a semi-educated person and he was assisting him in the imports. His visiting the customs for the clearance of the consignment also show that he was associated with the import. In the statement under Section 108 of the Customs Act, the appellant has disclosed several-detail about the arrangements made for the import of the goods and under valuation. This shows that the appellant is the main person behind the import and he has arranged all the details, particularly, in regard to the under invoicing of the goods, by arranging for part payment of the goods in Singapore through his Uncle. Thus, the under invoicing and payment of the differential value are appellant's arrangement. The later retraction of the statement does not appear to affect the credibility of the detailed disclosure. The retraction appears to be only an effort to get out of liability as contended by the learned SDR. The serious involvement of the appellant in the under valuation of the imported goods and consequent attempted evasion of customs duty are clear. It is the under valuation that has rendered the goods liable to confiscation under Section 111 of the Customs Act.

Further, a person who does any act which would render goods liable to confiscation or abets doing such an act becomes liable to penalty under Section 112 of the Act, irrespective of the ownership of the imported goods. The appellant clearly came within the ambit of Section 112. The imposition of penalty was therefore, entirely legal. The quantum of penalty is also quite moderate when it is seen against the value of the imported goods and the duty evasion involved. In these circumstances, there is no merit in the appeal. It falls and is rejected.