**Solly Perumal Vs. Cce**

**Solly Perumal Vs. Cce**

**SooperKanoon Citation** : sooperkanoon.com/35209

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** May-11-2004

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

**Appellant** : Solly Perumal

**Respondent** : Cce

**Judgement** :

1. The appellant herein Director of Clearing Agent Firm, M/s. Trinity Shipping & Allied Services (P) Ltd. challenges the order passed by the Collector of Customs, Kandla dated 28.4.95 under which a penalty of Rs. 25,000/- was imposed on him under Section 112 of the Customs Act, 1962.

2. The proceedings related to import of consignments of dyes by Brij Mohan Sood, Proprietor of M/s. Varun International Trading Co., Kandla through M/s.Trinity Shipping & Allied Services Pvt. Ltd. The first consignment was 400 drums of dyes yellow and dyes blue declared to be 8000 Kgs. valued at US $ 1.70 per Kg. CIF covered by Bill of Entry No.14315 dated 30th July, 1993 which was cleared. The second consignment was 480 drums of dyes of colours of red, blue, yellow and violet of a total declared with of 10 MT at a CIF unit price of US $ 1.70 per Kg., detained under Bill of Entry No. 3154 dated 7.6.91. The first consignment when weighed was found to have total weight of 10 MT as against declared weight of 8 MT. The test reports showed that the goods were synthetic organic dyestuff-disperse dye giving yellow and blue shades respectively. The second consignment was found to weigh 12 MT as against the declared weight of 10 MT. It was alleged

by the department that this consignment was also of acrylic dyes and not sulphur dyes as declared. In both cases under-valuation was also alleged.

3. In the show cause notice issued to the appellant herein, it was alleged that he had filed the misdeclared Bill of Entry No. 3154 dated 7.6.93 and the Bill of Entry 4135 dated 30.7.93 for which the misdeclared invoices and documents were produced without proper scrutiny of these documents. It was further alleged that the appellant was aware of the misdeclaration in the import of the 480 drums of dyes for which Bill of Entry dated 7.6.93 was filed inasmuch as he was asked to delay the forwarding of the samples and the samples were adulterated in his office and he was present there at the material time. Since the appellant had not informed the Customs authorities of the manipulations, he was liable for penal action under Section 112 of the Customs Act, 1962. The appellant contended that the declaration was filed solely on the basis of documents and information furnished to him by the importer and nowhere in law he is required to verify the truth or the authenticity of the information. He further contended that in this particular case he was no more than a name-lender and the clearance operations were actually supervised and conducted by Shri Sood, the importer. He alleged that Shri Sood had arrived at an understanding with the Customs officials and this was apparent when the appellant was kept out of the discussion which Shri Sood had with the Appraiser and the Assistant Commissioner. Even a visual inspection of the containers showed the net weight was 12 MT. There were 480 drums each containing 25 Kgs. There was no need for the appraiser to send the consignment for weighment in the KPT weigh-bridge. The consignment was handed over to the importer himself for weighment at the KPT weigh-bridge instead of deputing an officer. Reliance was placed on the statements of the Shed Appraiser and the Sepoy to contend that they had opportunity to meddle with the sample.

4. The adjudicating authority was not inclined to accept the contentions raised by the appellant in the light of the admissions in his statements which he had not retracted. In his statement dated 13.8.93 Solly Perumal stated that Shri S.D. Rao and Shri Sood had taken the original samples and mixed some of the dyes from that sample with the washing powder purchased by Shri Sood and thereafter the same was deposited by the Sepoy in the Docks. In his statement dated 14.8.93 he

stated that he did not inform the mixing of washing powder because he was scared and afraid that he might be punished for the involvement of his employee. In the same statement admitted that he was aware of the fact that there was excess of 2 MT in the consignment covered by Bill of Entry No. 3154 and he came to know from Shri S.D. Rao that the latter had managed the weight as declared from KPT weight-bridge. He has also admitted that he failed to notice that net weight was specifically shown as 25 Kgs. in; the Bill of Lading and on this basis the net weight worked out to 12 Mt and not 10 MT as declared in the bill of entry. The Commissioner was not inclined to accept the contention of the appellant that he was innocent of the allegations made against him.

5. The appellant would contend before us that the evidence against him is purely circumstantial and not enough to hold him guilty. No reliance could be made on the statement given by Shri S.D. Rao as it was recorded after Shri Rao was dismissed from the services of the appellant. He contends that he had not tampered with the sample and that he was not aware of the misdeclaration regarding weight and quality of the goods imported.

6. After hearing both sides, we do not find any reason to interfere with the finding of the Commissioner entered against the appellant. The appellant in his statement under Section 108 of the Customs Act has clearly admitted the fact that the samples were brought to his office and he was present when it was adulterated with soap powder. He had also admitted that he was aware of the excess weight of 2 MT in the consignment covered by the Bill of Entry 3154. In the light of the above admissions made by him which were not retracted it has to be taken that he was aware of the mis-declaration made by the importer both on the weight and the quality. His statements as above, are corroborated by the statements made by Shri S.D. Rao and also of Brij Mohan Sood. In the light of the above, we affirm the finding entered by the Commissioner against the appellant and dismiss the appeal.