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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-28-2005

Reported in : (2005)(187)ELT397TriDel

Judge : J Balasundaram, Vice-, N T C.N.B.

Appellant : Abhishek Electronics

Respondent : Commissioner of Customs

Judgement :

1. Vide the impugned order, the Commissioner of Customs, Air Cargo, New Delhi has confiscated computer parts imported by M/s. Abhishek Electronics on 11-10-2002 and 12-10-2002 with option to redeem them on payment of a fine of Rs. 3 lakhs and 7 lakhs respectively, enhanced the value of the imported items to US \$ 11 per piece and confirmed duty demand of Rs. 2,30,048/- (on goods seized on 11-10-2002) and Rs. 4,94,431 /- (on goods seized on 12-10-2002) and imposed penalties of Rs. 5 lakhs on Shri Atul Malhotra, Proprietor of Abhishek Electronics, Rs. 1 lakh on Shri Kishori Lal, Postal Clerk, Foreign Post Office, Rs. 50,000/- on Rajesh Kumar, Inspector Customs who was Sorting Assistant, Speed Post Centre, Rs. 10,000/- on Shri Vishnu Kumar, Sorting Assistant at Speed Post Centre.

2. We have heard both the sides. The confiscation and enhancement of value is not contested by M/s. Abhishek Electronics who only plead leniency in the quantum of fine and penalty, having regard to the fact that differential duty payable on the parcels seized on 11-10-2002 is only Rs. 46,560/- and Rs. 1,38,772/- on

the computer parts seized on the next day i.e. 12-10-2002. Having regard to the above, we reduce the fine of Rs. 3 lakhs to Rs. 50,000/- and the fine of Rs. 7 lakhs to Rs. 1.5 lakh. Penalty on Shri Atul Malhotra is reduced to Rs. 2 lakhs.

3. As regards Shri Kishori Lal, we note that in his first statement recorded on 21-1-2003, he has stated that the parcels which were seized by DRI on 11-10-2002 belonged to Chintu, owner of Abhishek Electronics; that Chintu informed him over mobile phone that he would be receiving 2 parcels of computer parts on 11-10-2002 and 4 parcels on 12-10-2002; that he would pay Rs. 15,000/- per parcel after clearance, if the parcels were got cleared for less duty; that Chintu told him to get these parcels cleared through FPO; that he told Rajesh Kumar, Inspector Customs to detain the parcels and send them to FPO for getting clearance from FPO at lesser duty for which Rajesh Kumar would also be taken care of; that he did not know why Rajesh Kumar cleared the parcels from the Speed Post Centre itself; he also stated that he had not received any money from Chintu. Although the learned Counsel draws our attention to the exculpatory statement of Kishori Lal recorded in Jail on 8-4-2003, it does not wipe out the initial exculpatory statement. There is no retraction in the eye of law of the statement dated 21-1-2003. Over and above this, Rajesh Kumar has also implicated Kishori Lal - in his statement dated 22-1-2003, Rajesh Kumar has stated that Kishori Lal told him of getting Rs. 15,000/- per parcel from the importer for clearing computer parts parcels from speed post centre during his posting for which he would get 50% of the money received; that he agreed to Kishori Lal's proposal; that Kishori Lal has given him about Rs. 60,000/- for clearance of the parcels during his tenure and out of that amount, he gave some money to the Deputy Commissioner and two Superintendents; that Kishori Lal also told him about two parcels imported by Abhishek Electronics to be detained and to be sent to FPO where Kishori Lal would manage to get them cleared on less amount of duty. The contention of Kishori Lal that on 11-10-2002, invoices containing details of value, description and quantity were pasted and, therefore, the parcels were not required to be subjected to 100% examination as per the standing order dated 30-8-2001/1-9-2001 on procedure of customs examination in FPO is not sufficient for him to escape the liability to penalty because the fact remains that he cleared these parcels without assessment to any duty whatsoever.

Therefore, we hold that penalty on Kishori Lal is justified. However, in the facts and circumstances of the case, we reduce the penalty to Rs. 25,000/-. In view of this we are not required to go into the submission that the parcels which arrived on 12-10-2002 were seized even prior to their presentation to the Customs Officers at Speed Post Centre.

4. Now we take up the appeal of Shri Rajesh Kumar. In view of his statement dated 22-1-2003 and the statement of Kishori Lal implicating him, we are not persuaded to accept the statement based upon his statement recorded on 17-12-2002 that due to the fact that he had to clear around 400 parcels/packets in two hours, he inadvertently cleared two parcels on 11-10-2002 without assessing them to duty. We sustain the penalty on Rajesh Kumar. But, however, having regard to the facts and circumstances of the case, we reduce the same to Rs. 15,000/-.

5. Penalty on Vishnu Kumar, Sorting Assistant at Speed Post Centre is set aside for the reason that in his statement recorded on 21-1-2003, he has only stated that he informed Kishori Lal about the arrival of the parcels imported by Abhishek Electronics, due to the friendship between him and Kishori Lal. On 11-10-2002 and 12-10-2002, Kishori Lal enquired about the arrival of the parcels and he informed Kishori Lal that the parcels have arrived and the statement of Kishori Lal does not implicate Vishnu Kumar in any way as he has only stated that he knew Vishnu Kumar since 1980 and he never disclosed the contents of the parcels imported by Abhishek Electronics to Vishnu Kumar.

6. In the result, the appeals of Abhishek Electronics, Kishori Lal and Rajesh Kumar are partly allowed, while the appeal of Vishnu Kumar is allowed in toto.

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