K.C. JaIn Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-12-2005

Reported in : (2005)(189)ELT230Tri(Mum.)bai

Judge : S T S.S., T Anjaneyulu

Appellant : K.C. Jain

Respondent : Commissioner of Central Excise

Judgement :
1 Appellants are an EOU who have been charged with unaccounted production and non-duty payment clearance of MMF, and an domestic traffic area unit (DTA unit) working on hand processing exemption, partner of the EOU firm; proprietor of DTA unit & an owner of Tempo No.MH-04-S-4080 who are aggrieved by an order of Commissioner of Central Excise, Mumbai-II.1.2 It appears on the basis of a specific information the officers of Central Excise Head Quarters Mumbai-II intercepted a tempo loaded with processed fabrics being registration No. MH-04-S-4080 on Eastern Express Highway near Ghatkopar on 16-1-2001 & on interrogation of the driven & a worker/loader found in the tempo admitting the goods were loaded at the premises of M/s. Girish Textiles Industries at Tank Road, Nr. R.R. Paints Bhandup (West) an 100% EOU engaged in the manufacture of processed Man made Fabrics & they were cleared from the EOU without any duty paying challans/documents. The officers took the tempo to the premises of the EOU & conducted enquiries. Delivery challan no. 19 to 144 of one M/s. Gaurav Textile Processors situated at CN 18, Chaudhary Estate, Mumbai 400078 a DTA

unit, were produced by the person incharge of the Tempo. Further enquiries were made by officers Central Excise at the EOU & DTA unit. They verified the stocks & seized the goods. A SCN was issued answerable to Commissioner Central Excise Mumbai-II as to why - (i) Fabrics as recorded in panchanama dated 16-1-2001 & 19-1-2001 in the premises of the EOU should not be confiscated under the provision of Rule 173Q of Central Excise Rules, 1944 as excess stock kept ready for clandestine removal to local market.

(ii) Duty demand of Rs. 59,83,306/- should not be demanded on goods removed on challans of the DTA unit by the EOU, along with interest thereon.

(iv) Confiscation liability under Rule 173Q(2) read with Rule 209 of the Central Excise Rules, 1944 not be arrived.

(v) The notice also proposed penalty order under Rule 209A on the partner of EOU, proprietor of DTA & tempo owner.

1.3 After hearing, the Commissioner confirmed the duty demands & imposed the penalty under Section 11 AC & Rule 209A. The tempo was ordered to be confiscated under Rule 173Q(2) read with Rule 209 & an offer of redemption on Rs. 1 lakh was given. Hence these appeals.

2.1 After hearing both sides & considering the submission, it is found -(a) The order impugned does not find any overt or act in concert with the knowledge of the owner of the tempo in the alleged non-duty paid removal of the goods. The owner has employed a driver, the driver had obtained delivery challans & produced the same; the driver & the owner of the tempo, cannot be accepted to be in the knowledge of the nature of processing on or duty paid or not on the goods or the ownership of the goods loaded on the tempo. The tempo and its owner & the person incharge are innocent persons engaged in the normal activity of transportation of goods, after obtaining documents, all precautions of a prudent person have been taken. They had no means to suspect the nature of the documents to be not covering the goods. The owner is not liable to any penalty nor tempo liable to seizure much less confiscation. The penalty is to be set aside.

(b) Confiscation of the tempo under Rule 173Q(2) read with Rule 209 cannot be upheld as it was only a means to transport of the goods.

It is not e.g. plant & machine etc. of a manufacturers which are liable to confiscation under Rule 173Q(2). The confiscation order is set aside, more so when the Id. Commissioner has recorded no liability to confiscate under Rule 173Q(2) since the demand period was September 2000 to January 2001 and Notification No. 38/2000 C.E. (NT) dated 12-5-2000 rescinded Rule 173Q(2) with effect from 12-5-2000. Appeal of Tempo owner to be allowed.

(c) As regards the liability of the demands & confiscation of the goods processed/incorrectly accounted by the EOU & abetment, if any, by the DTA unit of the activities of an EOU, we find force in the submission that the Commissioner Central Excise, Mumbai-II has no jurisdiction. The EOU being licensed & under the Administrative Jurisdiction of the Commissioner of Customs, Mumbai. Following the law laid down by the Apex Court in case of UOI v. Ram Narain Bishwanath regards these appellants i.e. EOU & DTA units & the partner & proprietor on the grounds of lack of Jurisdiction and allow these appeals in same terms as in that case.