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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-30-2005

Judge : J Balasundaram, Vice-, A Wadhwa, S T C.

Appellant : Mukul Mehta

Respondent : Commissioner of Customs

Judgement :

1. The present appeal is against the penalty of Rs. 5.00 lakhs (Rupees five lakhs only) imposed upon the appellants under the provisions of Section 114(iii) of the Customs Act, 1962.

2. As per the facts on records, the Officers of Special Investigation and Intelligence Branch of New Customs House, Bombay, detained sixteen export consignments of Printed Circuit Boards belonging to M/s. Hari Impex. The said consignments were covered by sixteen shipping bills under drawback claim. On investigation, it was found that the value of the goods declared by the said exporter was on the higher side.

Statements of various persons were recorded on the basis of which proceedings were initiated against the exporter as also various other persons including the appellants herein.

3. The case against the appellant is that he had aided and abetted mis-declaration of the value of the goods by the exporter M/s. Hari Impex. The adjudicating

authority, while finding the appellant guilty of offence has recorded as under: He also did not respond to the summons for one or the other reason.

Mukul Mehta's involvement in the illegal aiding and abetting of mis-declaration and claiming excessive drawback is clear by his action of exporting the goods of M/s. Hari Impex with the help of Raghavan and Vasudeo Gaonkar. He got the PCBs packed and all the documents were handled by him only. He admitted that he had charged % of value as his commission. From the statement of Raghavan, it is clear that Mukul Mehta paid very high commission to Raghavan and Vasudeo Gaonkar as they were also aware of the over invoicing of PCB. Therefore, the evidence on record makes it clear that Mukul Mehta was knowingly aiding and abetting mis-declaration of the value of goods and in any case was a party to the fraud. He has rendered the goods liable confiscation under Sections 113(d) and (i) of the Customs Act and himself liable to penalty under Section 114(iii) of the Customs Act, 1962.

4. The appellant's contention, as agitated by the Id. Advocate is that there is nothing in the statement of Shri Raghavan and Shri Gaonkar to show that the appellants had any knowledge as regards the over valuation of the export goods. The statements is only to the effect that the appellant charge % of the value of the goods as commission, which fact by itself cannot be taken as an evidence of knowledge on the part of the appellants as regards the value of the goods. The appellant was only concerned about the packing of goods at Bombay and for handling the documents for which he charged the commission. The above findings are based on the suspicion and conjectures inasmuch as the statements no where implicate the appellants and in any case being statements of co-noticees cannot be relied upon as a sole evidence and needs independent corroboration. There is not even a whisper in the said statements to the effect that the appellants had any knowledge of mis-declaration or over valuation of export consignments. The appellants is not expected to know any contravention committed by the exporter and cannot be expected to have any knowledge about all the consignments he handled as a forwarding agent. For the above proposition, he has relied upon the Tribunal's decision in the case of Shri R.P. Narayana v. CC 5. Contesting the above stand of the appellant, Id. DR. Shri Vimlesh Kumar has drawn our attention

to Paras 10 and 11 of the show cause notice detailing statements of Shri Raghavan, wherein he has admitted that the relevant export documents for shipment was handed over to him by Shri Mukul Mehta, who was their authorized representative at Delhi.

He has deposed in the said statements that he was aware of the over invoicing of the export consignments of PCBs and that is why high amount of commission was made to him as also to Shri Gaonkar. However, he denied about the knowledge of actual price of PCB in question or the amount of draw back received by Shri Mukul Mehta from the concerned exporters. Statements of Shri Mukul Mehta was also recorded, wherein he detailed that how he was introduced to Shri J.P. Singh of M/s. Hari Impex by Shri Raghavan and that he was charging % of the value as his commission to act as forwarding agent.

6. After considering the submissions made both the sides, we find that the adjudicating authority has relied upon the statements of Shri Raghavan and Shri Gaonkar. However, in the said statements there is no direct reference to the fact that the present appellant Shri Mukul Mehta was aware of over invoicing of the consignments by M/s. Hari Impex. The appellant's own statements nowhere reflects upon the fact of his being aware of the over invoicing of the consignments in question.

Even Shri J.P. Singh of M/s. Hari Impex in his communication to the department has not implicated the appellant. As such, we are of the view that there is no sufficient material on record to give an adverse finding against the appellants. The references made by the adjudicating authority to the various statements at the most lead to some doubt against the appellants. However, it is well settled principle of law that doubt, howsoever strong, cannot take place of evidence. As such, by extending the benefit of doubt to the appellants, we set aside the personal penalty imposed upon him and allow the appeal with consequential relief.

7. I am unable to agree to the proposed order recorded above. I am of the view that departmental adjudication proceedings do not require same kind of strict proof as required in respect of criminal prosecution cases. The Adjudicating Commissioner, in Para 20 of his order, has clearly given reasons as to why the

appellant has rendered himself liable to penal action. The detailed reasons given therein leaves no doubt regarding involvement of the appellant. As such, I am of the view that it is not a fit case for extending the benefit of doubt. At the same time, considering the amount of excess drawback claim and the amounts of penalty imposed on other persons involved in the case, I am of the view that there is scope for reducing the penalty of Rs. 5 Lakhs imposed on the appellant to Rs. 1 Lakh. I order accordingly.

The following difference of opinion placed before the Hon'ble President in terms of Section 129C(5) of the Customs Act, 1962: Whether the penalty on the appellant is required to be set aside as held by the Member (Judicial) The penalty on the appellants is required to be reduced from Rs. 5,00,000/- Rs. 1,00,000/- as held by the Member (Technical). (C. Satapathy) (Archana Wadhwa) Member (T) Member (J) Dated : 9.7.2005 Dated : 19.7.2005 9. The case of the Department against the appellant is based upon the statements of Shri V.T. Gaonkar to the effect that he used to get Rs. 500/- per shipping bill from the exporter M/s. Hari Impex, whose clearance work he got through the appellant, and Shri V.S. Raghavan to the effect that the appellant agreed to pay him and Shri Gaonkar Re.

1/- per PCB after shipments were effected, that Shri Gaonkar demanded Rs. 12/- per PCB and Gaonkar was paid Rs. 5 lakhs as his commission and that a high amount was paid to him and Gaonkar as Commission as they (Gaonkar and Raghavan) were aware of the over-invoicing of export goods. However, there is nothing on record as to how much was the normal commission in such cases so as to determine whether the payment to Shri Raghavan and Gaonkar was higher than the usual commission. So, as to even infer that the appellant had knowledge of the over-invoicing. The appellant's statement that he charged % of the value of the goods as his commission has not been dis-believed and there is no finding that such amount exceeds the normal commission. In these circumstances, I agree with Id. Member (Judicial) that the benefit of doubt should be extended to the appellant and penalty imposed upon him, set aside.

10. The file is hereby returned to the referring Bench for passing majority order.

In view of the majority order, the appeal is allowed with consequential relief.

