

Shri Shambhu Goyal Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-25-2005

Judge : S Kang, Vice

Appellant : Shri Shambhu Goyal

Respondent : C.C.E.

Judgement :

1. The appellant filed this appeal against the adjudicating order passed by Commissioner of Customs whereby penalty of Rs. 2lakhs has been imposed on the appellant under Section 112 of Customs Act.

2. Brief facts of the case are that on 23,5,03 certain quantity of edible oil was seized from trucks on the ground that edible oil is smuggled to India from Nepal. A driver of the trucks made a statement that edible oil loaded on the trucks belongs to Rajaram and also stated that some mobile Nos. were given to Shri Vishnujee for further contact and also two numbers mentioned against the name of Shri Rajaram, one of the number is of the factory of the appellant 3. The penalties were imposed on the ground that applicant is partner of Rajaram, therefore, both are involved in smuggling of the vegetable oil.

4. The contention of the applicant that he is only a partner in a unit which is engaged in the manufacture of fertilizer and two telephones are installed in their factory which are frequently used by their dealers and one of the telephone number is the same which is mentioned in the slip handed over by the driver

against which name of Rajaram is written. The contention is that there is no evidence on record to show that the appellant was involved in the smuggled activity. The driver of the truck has not named the appellant as owner of the goods. Shri Rajaram also not named the appellant as in any way related to the goods in question which were smuggled from. Nepal. As Rajaram being their dealer of the fertilizers known the telephone numbers of the factory, therefore, that number written against the name of Rajaram's number appellant not liable for any penalty on the ground of smuggling.

5. The contention of the revenue is that Rajaram is known to the appellant and appellant number is given by Rajaram to the driver for further direction,, therefore, appellant is liable for penalty' as the direction, were given from that phone.

6. The appellant is not challenging the order of confiscation of the goods, The appellant is only challenged, the imposition of penalty of Rs. 2lakhs imposed under Section 112 of Customs Act. The telephone number which was installed in. the factory of the appellant mentioned against the name of Rajaram. The appellants are engaged in the manufacture of fertilizer and the telephone number which is mentioned in the slip is installed in their factory and Rajaram is a dealer of appellant. These facts are not disputed by the Revenue, The driver of the truck at the time of recovery of smuggled vegetable oil named only Rajaram and not the appellant, Shri Rajaram in his statement also not named the appellant in any manner related to the smuggled vegetable oil, Mere mentioned of telephone number against the slip of Rajaram does not make the appellant liable for any penalty under Section 112 of the Customs Act, Therefore, the impugned order imposing the penalty on appellant is not sustainable, hence set aside. The appeal is allowed.