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Shri Dalip Kumar Jaiswal Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-27-2005

Judge : S Kang, Vice

Appellant : Shri Dalip Kumar Jaiswal

Respondent : C.C.E.

Judgement :

1. Heard both sides, the appellant tiled this appeal against the Order-in-appeal passed b Commissioner (Appeals) on 21.11.98 silk yarn of Chinese was recovered from the van by the police and the appellant, was in the van at the time of interception. Thereafter van with Chinese silk yarn was handed over to the Customs authorities and on investigation, present appellant disclosed that the part of his residential premises was given on rent to Shri Girish Sharma and Anil Sarawgi and six bags of Chinese silk was also found in the premises of the appellant which was as per appellant given on rent. The silk recovered from the van and premises of the appellant was seized on the reasonable belief that it is smuggled into India. After issuing a SCN the adjudicating authority confiscated the seized Chinese silk and.

imposed penalty of Rs. one lakh on the appellant under Section 112 of the Customs Act.

2. The appellant is only challenging the imposition of penalty. The contention of the appellant is that he is not concerned with the seized Chinese silk yarn. On

24.11.98, he was merely present on spot when Chinese silk yarn was recovered from the van. the appellant forcibly put into the van and was taken to the police station and subsequently handed over to the Customs officer. Before the Customs, the appellant made a detailed statement stating that he is not concerned with the Chinese silk yam recovered from the van and he was forcibly put into the van. But in his statement he disclosed that one portion was rented to some other person and searched of that portion regarding the key was produced by the appellant. Six bags of Chinese silk yarn was recovered.

3. The contention is that there is no evidence on record to show that yarn in question is smuggled in nature or is of Chinese origin. At the time of seizure, sample was taken out no test report was given to the appellant. it is also contended that silk yarn was not notified goods Hence the onus is on revenue to show that the seized silk yarn is smuggled in nature and in absence of this evidence, the penalty imposed on the appellant is not sustainable. In respect of the yarn recovered from the premises of the appellant, the contention is that as the appellant has given the premises on rent, therefore, he is not aware of the fact that some yarn was stored there.

4. The contention of the revenue is that the appellant was present in the van from which Chinese silk yarn was recovered and he voluntarily disclosed to the revenue officer that some Chinese silk yarn was also at his residence. The key of the room was produced by the appellant and foreign origin yarn was recovered from the premises. The contention is that during the proceedings, one Shri Mohd. Ratif filed an application claiming the seized goods on the ground that Chinese silk yarn was legally imported into India and he is owner of the goods. However, subsequently Mohd. Ratif withdraws the application. On investigation made by Shri Anil Sarawgi and Girish Sharma both denied the fact that they had taken the premises of the appellant on rent.

5. In this case the appellant is only challenging the imposition of penalty under Section 112 of Customs Act. 12 bags of Chinese origin yarn were recovered which were confiscated by the adjudicating authority. The contention is that he is not concerned with the recovered yarn without any yarn. In view of the fact that he

was present at the time of recovery of Chinese Silk yarn from the van and further he leads the Customs Officer to his residential premises and from his premises another six bags of Chinese silk yarn was recovered.

The appellant took the plea that portion of the 4 residence was rented out to Girish Sharma. Shri Girish Sharma in his statement denied the fact that he has taken the rent from the premises of the appellant. The key of the room in which the Chinese origin silk yarn was kept is produced by the appellant In respect of the foreign origin of the yarn, Mohd. Latif claimed the goods and by saying that it is Chinese origin silk yarn and was legally imponed into India hut his claim was not found to be false by the adjudicating authority and. appropriate penalty has also been imposed on him. Taking into facts and circumstances of the case, the contention of the appellant is that he is not concerned with the seized Chinese silk yarn origin has no merit, However taking into facts and circumstances of the case, the penalty is reduced to Rs. 70,000/- otherwise impugned order is upheld. The appeal is disposed of in the above terms.

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