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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-28-2005

Judge : J Balasundaram, Vice-, S T S.S.

Appellant : Gaurang Goradia

Respondent : Commissioner of Customs

Judgement :

1. These appeals arise from the same order of the Commissioner of Customs, Air Port, Sahar, Mumbai and are being disposed by this common order after hearing both sides.

1. I order that the goods namely Sony Digital Video Recorder, Sony Digital Audio Recorder, Power Cable etc. be assessed at Rs. 27,69,000/-.

2. I also order confirmation of differential duty amounting to Rs. 13,59,500/- on the assessable value of Rs. 27,69,000/- after adjusting Rs. 25.000/- paid as duty by Shri Gaurang Goradia on his arrival.

3. I order confiscation of the Sony Digital Video Recorder, Sony Digital Audio Recorder, Power Cable etc. under the provisions of Section 111(1) and (m) of the Customs Act, 1962.

4. However I give an option to Shri Gaurang Goradia to redeem the confiscated goods on payment of redemption fine of Rs. 15,00,000/-(Rupees fifteen lakhs only) under Section 125 of the Customs Act, 1962.

5. I Confiscate two samsonite suitcases under seizure used for carrying above stated goods under Section 118 of the Customs Act, 1962.
6. I order that the goods mentioned in Annexure A may be assessed at Rs. 8,05,420/-. The said goods imported by Shri Gaurang Goradia are held liable for confiscation under Section 111(1) and (m) of the Customs Act, 1962. However, the goods are not available for confiscation.
7. I confirm differential duty amounting to Rs. 3,49,970/- under Section 28(1) of the Customs Act, 1962, in respect of the said goods mentioned in Annexure A. 8. I order interest to be recovered under Section 28AB of the Customs Act, 1962 at appropriate rate from Shri Gaurang Goradia on the said differential duty of Rs. 3,49,970/-.
9. I impose a personal penalty of Rs. 10,00,000/- (Rupees Ten lakhs only) on Shri Gaurang Goradia under Section 112(a) and (b) of the Customs Act, 1962.
10. The amount of Rs. 18,00,000/- (Rs. 14,00,000/- + Rs. 4,00,00G/-) deposited by Shri Gaurang Goradia during the course of investigation is ordered to be adjusted against the aforesaid liabilities.
11. I order that the goods as mentioned in Annexure B may be assessed at Rs. 3,95,000/-. The said goods imported by Shri Devang Goradia are held liable for confiscation under Section 111(1) and (m) of Customs Act. 1962 However, the said goods are not available for confiscation.
12. I confirm differential duty amounting to Rs. 2,39,400/- on the goods imported by Shri Devang Goradia as mentioned in Annexure B to the show cause notice.
13. I order interest to be recovered at appropriate rate under Section 28AB of the Customs Act, 1962 from Shri Devang Goradia on the said differential duty of Rs 2.39,400/-.
14. I impose a personal penalty of Rs. 2,50,000/- (Rupees Two lakh fifty thousand only) on Shri Devang Goradia under Section 112(a) and (b) of the Customs Act, 1962.

15. I order that the goods as mentioned in Annexure C to the Show Cause notice may be assessed at Rs. 3,26,000/-. The said goods imported by Shri J.B Handa are held liable for confiscation under Section 111(1) and (m) of the Customs Act, 1962. However, the goods are not available.

16. I confirm differential duty amounting to Rs. 1,68,100/- under Section 28 AB of the Customs Act, 1962 from Shri J.B. Handa in respect of the goods mentioned in the Annexure C of the Show Cause notice.

17. I order interest to be recovered under Section 28AB of the Customs Act, 1962 at appropriate rate from Shri J.B. Handa on the differential duty of Rs. 1,68,100 /-.

18. I impose a personal penalty of Rs. 2,00,000/- (Rupees Two lakhs only) on Shri J.B Handa under Section 112(a) and (b) of the Customs Act, 1962.

19. An amount of Rs 2,00,000/- deposited by Shri J.B. Handa during the course of investigation shall be appropriated against the said liabilities on his account.

20. I order that the goods as mentioned in Annexure D to the Show Cause notice may be assessed at Rs. 84,000- (Rupees Eighty four thousand only) The said goods imported in Smt. Saroj Handa are held liable for confiscation under Section 111(1) and (m) of the Customs Act, 1962. However, the goods are not available for confiscation.

21. I confirm differential duty amounting to Rs. 30,900/- on the goods imported by Smt Saroj Handa under Section 28(1) of the Customs Act, 1962 in respect of goods mentioned in Annexure 1 to the show cause notice.

22. I order interest to be recovered under Section 28AB of the Customs Act, 1962 at appropriate rate from Smt. Saroj Honda on the differential duty of Rs. 30,9000/-.

23. I impose a personal penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on Smt. Saroj Handa under Section 112(a) and (b) of the Customs Act, 1962.

24. I impose a personal penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) on Shri Praveen Arora under Section 112(a) and (b) of the Customs Act, 1962.

25. The foreign currency amounting to UK. Sterling pound 45,000/ equivalent to Rs. 31,50,000/- smuggled out by Shri Gaurang Goradia are held liable for confiscation on under Section 111(d), (e) and (h) of the Customs Act, 1962. However the said currencies are not available for confiscation.

26. I impose a personal penalty of Rs. 5,00,000/- (Rupees Five Lakhs only) each on Shri Gaurang Goradia and Shri Devang Goradia under Section 114 of the Customs Act, 1962.

Only S/Shri Praveen Arora, Gaurang Goradia and Devang Goradia are in appeal.

1.3 Pursuant to working out an intelligence and interception of Gaurang Champaklal Goradia, a Pax holding Indian Passport No. Rs. 392885 who had arrived by Lufthansa Flight at Mumbai Airport on 8-4-03 and was found to be carrying certain Sony Digital Video Recorders in his baggage which he had mis-declared as regards value and contents an enquiry was caused and show cause notice dated 1-10-03 was issued inter alia to the Appellants by the Addl. Director General, DRI, Mumbai.

1.4 The notice alleges a criminal conspiracy was hatched between one Devand Goradia, Gaurang Goradia, Jung Bahadur Handa of London and others along with Shri Parveen Arora to import high value electronics studio equipments in and as passenger baggage from UK/Europe by undervaluation and mis-declaration of the same to evade duty. The show cause notice inter alia directed - (i) Why goods imported by Gaurang Goradia on 8-4-03 and seized by the DR I should not be confiscated and differential duty on account of enhancement of value of the said goods not be demanded along with penalty liability under Section 112 of the Customs Act.

(ii) The similar action was proposed in respect of goods imported by the said Gaurang Goradia in the past on his strips from abroad and as listed in Annexure 'A' to the Show Cause Notice.

(iii) Similarly on imports made by Devang Goradia on his trips from abroad similar action should not be taken for the goods as listed in Annexure B to the show

cause notice.

(iv) Similarly on imports made by Smt. Saroj Handa, on his trips from abroad similar action should not be taken for the goods as listed in Annexure D to the show cause notice.

(v) Shri Gaurang Garodia and Devang Goradia and/or any other person claiming ownership of sterling pounds 45,000 were further called upon to show cause as to why, (a) the foreign currency amounting to UK sterling pound 45,000 smuggled out of India by Shri Gaurang Goradia should not be confiscated under Section 113(d), (e) and (h) of the Customs Act, 1962.

(b) Penalty under Section 114 of the Customs act, 1962 should not be imposed on each one of them.

2.1 On a perusal of the statements of Devang Goradia and Gaurang Goradia, as regards foreign currency acquisitions, it is found that the statement of Gaurang dated 8-4-03, at page 4 he has deposed as ...You have now asked me as to from where and from whom the sterling pounds of 32,500/- were procured. I say that these sterling pounds were taken from one person called kalian of Samrat Jewelers, Kalina.

This time the entire amount was collected by my brother. On being asked I say that I have been to Samrat Jewellers on 2 to 3 earlier occasions to collect foreign currency from him. Further I say that out of sterling pound 32,500/-(equivalent to Indian Rupees 23,07,500/-) an amount of rupees 5,00,000/- in Indian currency and sterling pound 7,500/- were contributed by Shri Pravin Arora as his share....

...this foreign currency was also procured by me from Mr. Kalyiin of Samrat Jewellers...

Shri Devang Arora in his statement dated 8-4-03 at page 4 as regards the payment for the said goods has submitted ...the payment for the same was arranged in the following manner.

Shri Pravin Arora had paid an advance of GBP 7,500 and Rs. 5,00,000 lacs to me and I had arranged the GBP 18,000 from my business savings. You have now asked me as to how I had procured the said amount of foreign exchange. I say that I had arranged for my share of 18,000 GBP from Shri Kalyan who runs a jewellery shop in the name of Samrat Jeweller in Ka-lilna. I had obtained the foreign currency through him. I had also converted that Rs. 5,00,000 given by Mr.

Pravin Arora into 7000 GBP from Shri Kalyan as such. I have 32,500 GBP with me for getting the said two sets of sony digital video recorder mixer from London. Accordingly I had sent my younger brother Shri Gaurang Goradia to London on 4-4-03 by Lufthansa flight. I had neatly packed the foreign currency i.e. GBP 32500 in a cardboard box and had packed the same in Gaurang's hand baggage....

While Shri Parvin Arora in his statement dated 8-4-03 has disclosed as follows, ...On being asked to state that for purchase of above such seized goods I had handed over Rs. 5,00,000/- (cash) Rs. 1,00,000/- cheque (equivalent to pounds UK 7500 on 4-4-2003 as an Advance amount...

A plain reading of these extracts of the statements, relied upon, would indicate that there is no corroborated established single story of procurement of UK pounds sterling for the said trips. Verifiable details e.g. existence of Samrat Jewellers at Kalina and location of Kalyan and attempts there to are badly delayed and made only on 12-9-03 i.e. 5 months after the incident. Reasons for this delay and especially no enquiries about the payment of Rs. 1,00,000/- in cheque stated to have been effected by Pravin Arora have been brought on record. There is a conflict in the statement of Shri Gaurang dated 8-4-03, as is evident from the extracts herein above. There is also a contradiction about the payments/procurements of sterling pound 7500/- by Shri Parvin Arora to the brothers. The slipshod enquiries, the contradictions on record/statements relied upon, do not enthrone the acceptance about the collection/procurement of pound sterling 45,000/- and its eventual taking out of India. The consequent confiscation and penalty liabilities under Section 113 and Section 114 as arrived at in the impugned order are therefore not upheld and are required to be set aside.

2.2 From the perusal of statements especially of Shri Pravin Arora and the brothers it is evident that there was no requirements for collection of pound starlings to be made in India and thereafter the same to be taken out for purchases of the goods from the other alleged conspirator/corroborators in London. As the following admissions in the statement of Shri Gaurang dated 8-4-03 reveal...." I reached London Airport and spoke to my friend Shri Vijay Rajkotia on his residence telephone number 442082091734. Vijay Rajkotia is known to me because of my handicraft business. Vijay came to the airport to pick me up in his Mercedes vehicle & we drove to his house. On the same day I contacted Shri J.B Handa owner of digital planet on his mobile number 447956896522. I know Shri J.B Handa through Pravin Arora. Pravin Arora has given me telephone number of Shri Handa & told me to collect electronic goods such as video cameras, digital video recorders, digital audio mixers etc. Shri Handa met me at pre decided place & handed over one Sony Digital Video Recorders & one Sony Digital Audio Mixer to me. Pravin Arora had instructed me to collect these electronic goods from Shri J.B Handa. I paid an amount of Sterling pounds 11,500/- to Shri J.B Handa. Shri Handa handed over an invoice of Sterling pound 18200/- raised on my name along with a VAT form...

this would confirm that there was a pre-arranged supplier in London of good selected and decided by not Shri Gaurang or Devang but by Pravin.

The Invoices given for the goods do not co-relate with the payments made, Even if Gaurang statement above is accepted to be true as regards payment of sterling pound to have been made by him. The very fact that VAT is being refunded to the passengers leaving London the invoices which had inflated or higher prices could be serving a purpose to cheat the UK Customs of VAT and not depict the true valuation of the goods & of being showing prices at arms length. The amount shown on such suspect invoices in this case therefore cannot be approved or accepted as transaction value for the goods imported. Whether this invoices were carried by Shri Gaurang or/and procured subsequently. Therefore the undervaluation arrived at as regards the earlier consignments said to have been imported and listed in annexure A and B of the show cause notice prepared and based on invoices procured and got at by Gaurang, conveniently on DRI office fax

numbers, cannot be considered to be invoices at arms length, depicting the true value for Custom Duty purposes. The duty demand made in Annexure A & B therefore cannot be upheld and are required to be set aside along with other liabilities, & consequences.

2.3 As regards the confiscation liability for under valued goods admitted to be carried in the baggage of Gaurang the duty liability and confiscation liability as arrived at has to be upheld since it is accepted by Gaurang. Duty of Rs. 13,59,500/- on the assessable value as admitted of Rs. 27,69,000/- is therefore required to be confirmed on Sony Digital Video Recorder, Sony Digital Audio Recorder, Power Cable etc. brought by the Pax Gaurang on 8-4-03 when he arrived by Lufthansa Flight and got himself cleared through Customs at Sahar Airport. The liability to confiscation of these goods under Section 111(1) and (m) of the Customs Act, 1962 is upheld. However, the redemption fine of Rs. 15,00,000/- offered to redeem the same is found to be excessive in view of the admitted position as regards margin of profits which emerge from the statement of Shri Parvin Arora. The sale prices of these two items was to be Rs. 19.5 and 16.5 lakhs respectively, they were to be sold at a price of Rs. 20.5 lacs and 17.5 lacs respectively. This would indicate the market price of Rs. 37.5 lacs for the said goods.

Consequently the amount of margin profit would not be equivalent to Rs. 15 lakhs as arrived at by the Ld. Commissioner. In any case the order impugned does not indicate why and how the Commissioner has arrived at a redemption fine of Rs. 15 lakhs which was required to be arrived by the Commissioner keeping in mind the mandate of the Customs Act, 1962 as regards the quantum of fine & margin of profit. Consequently the redemption fine is reduced to Rs. 7 lakhs keeping in mind that the duties of Rs. 13,59,500/- would be required to be paid and also the equipment would have further depreciated in value, as all sophisticated electronic items are wont to be.

2.4 Since the goods have been intercepted with the passenger Shri Gaurang, Goradia by the officers and duty demand on the same have been confirmed along with redemption fines, moping up almost all the profits, the penalty on him

imposed under Section 112(a) is called for , however there are no reasons arrived at in the impugned order for us to uphold and maintain the same at the level of Rs. 10 lacs as arrived at by the Ld. Commissioner, we would reduce the same and determine Rs. One lakh to be adequate penalty under Section 112(a) on Shri Gaurang Goradia.

2.4 Since Shri Devang Goradia was only to get profits out of the mis-declaration effected by the Pax and that would have amounted to a small amount as per the statements relied by the department of Shri Parvin Arora, We uphold the penalty liability on Shri Devang by upholding the penalty liability on him under Section 112 and reduce the same to Rs. 1 lakh.

2.5 From the statement of Shri Parvin Arora as relied upon it is apparent that he has induced these brothers to go to London and collect electronic items and bring them to India which he was to sell. He was admittedly aware of the goods being cleared by mis-declaring the value and he has given the contact and addresses of Shri G.B Handa the other collaborator and conspirator at London to the Pax with instructions to collect and bring the electronic items which have been found liable to confiscation , therefore he is liable to a penalty under Section 112 of the Custom Act. However the penalty of Rs. 25 lakhs imposed on him is excessive and no reasons have been arrived by the Ld. Commissioner to uphold the same at level, we would reduce the penalty to Rs. 1 lakh which is penalty on the other co-conspirator/collaborators viz. Devang Goradia/Gaurang Garodia.

3.1 These Appeals are therefore allowed partly as per findings herein above.

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