

Birendra Kumar Singh Vs. C.C.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-22-2005

Judge : M Ravindran

Appellant : Birendra Kumar Singh

Respondent : C.C.

Judgement :

1. This is an appeal filed against the Order-in-Appeal dated 29.4.2004 wherein the Commissioner(Appeals) after hearing the appellant had reduced the penalty from Rs. 15,000/- to Rs.5000/- 2. The relevant facts for consideration are that Customs authorities on 1.3.2000 intercepted a vehicle which was carrying contraband goods. On further investigation, show cause notices were issued to many persons and current appellant, being one of them. The appellant before me was asked to show cause as to why penalty should not be imposed upon him under Section 112 of the Customs Act, 1962 being de facto owner of the vehicle which was used for transporting contraband. On adjudication, the adjudicating authority imposed a penalty of Rs.15,000/- on the appellant. On appeal, the Commissioner (Appeals) after considering the facts and circumstances of the case had reduced the penalty from Rs. 15000/- to Rs.5000/-. This appeal is filed against the imposition of penalty itself.

3. Learned Advocate appearing for the appellant submits that, the imposition of penalty Under Section 112 on the current appellant is totally wrong and misconceived. She submits that the penalty has been imposed on the appellant

based only on the statement of the driver of the vehicle which was intercepted by the Customs officers. She also submits that the documents relating to the ownership of the vehicle were produced, where the goods were seized with the car, which categorically show that the appellant was not the owner of the vehicle but somebody else was owner of the vehicle. She submits that in respect of the definition of "owner" under Motor Vehicle Act, the current appellant will not become the owner. She also submits that imposition of penalty based only on the statement of the co-accused is contrary to the settled law.

4. Learned DR on the other hand submits that the statement of the driver very clearly states that the current appellant in fact, was involved in the whole exercise of bringing the contra band. Learned. DR further submits that the appellant was also monetarily benefiting by letting the car for movement of the contraband goods and in any case, there is an overwhelming evidence in the form of statement, of driver who categorically implicated the appellant by specifically mentioning the village where the current appellant resides. He submits that on the face of the total statements of all other put together, the appellant is correctly implicated and penalty is imposable on him.

5. Considered the submissions made by both sides and perused the record. I find that the penalty appellant imposed on the appellant is under Section 112 of the Customs Act, 1962. In order to appreciate the correct position, the provisions of Section 112(a) and (b) are reproduced below: Section 112. Penalty for improper importation of goods, etc. - Any person - (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or (b) who acquires possession of or is in any concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in way other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111.

I find that in order to impose penalty Under Section 112, the person has to do or not to do any activity mentioned in the above section. "It is very clear that the present appellant was not covered under Section 112 (a) of the Act, It is

vehemently argued by the learned DR. that appellant would fall under Section 112(b) because he is "in any way concerned in carrying" the contraband goods. I find that the contraband goods were never physically found on the appellant and vehicle in which the contraband was found was not owned by the appellant. Overwhelming evidence in respect of registration certificate issued by the transport authorities and insurance companies and other documents which were seized in the vehicle, point directly to somebody else as owner and not to the current appellant. I also find that definition of the 'owner' under the Motor Vehicle Act does not cover the current appellant as vehicle was not registered in his name. Further, I find that Commissioner (Appeals) has accepted these contentions of the appellant and in paragraph 14 of his Order-in-Appeal has observed that "Having regard to facts and circumstances of the case, I agree with the submission of the appellant to the extent that Shri Ram Gopal and Smt.

Kalawati should also have been show-caused and proper investigation should have been made to ascertain the de facto owner of the vehicle.

But for these lapses alone, the appellant cannot be exonerated from the allegation particularly based on the statement Shri Iliyas Miyan, the driver of the vehicle which is a substantive piece of evidence." I find that the Commissioner (Appeals) has mis-directed himself in this regard inasmuch as once it is admitted that there are every chances that the appellant may not be de facto owner of the vehicle but somebody else may be the out come may be different. On the face of it, the appellant cannot be penalized under Section 112 (a) and (b) about the ownership of the vehicle. Further, I find that the statement of the driver Shri Iliyas Miyan cannot be a substantive piece of evidence as he was one of the co-accused in the case and penalty has been imposed as him. It is settled law that statement of co-accused cannot be used without corroborating the evidence. In this case, I find that the evidence which has been seized by the Department when they intercepted the vehicle in the form of registration certificate and other documents of the vehicle which were produced before me directly show that the ownership of the vehicle is with somebody else other than the current appellant. On the face of it, the appellant should not be Saddled with any penalty under Section 112 of the Customs Act.

6. In view of the above circumstances, the impugned order of the Commissioner (Appeals) deserves to be set aside. I set aside the impugned order and allow the appeal of the appellant.

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