

Ramesh Kumar Bansal Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-30-2005

Judge : M Ravindran

Appellant : Ramesh Kumar Bansal

Respondent : Commissioner of Central Excise

Judgement :

1. The common issue in these appeals is in respect of penalty imposed on the appellants under Section 112 (b) of the Customs Act, 1962.

2. Relevant facts for consideration are the appellants herein are traders in MS Scrap. Shri Ramesh Kumar Bansal, appellant No. 1 placed a verbal order on Shri Bharat Kumar Dhariwal, appellant No. 2 for supply of Misprint sheets which are generated as scrap in industry. The vehicle carrying the said scrap was checked by the Trade Tax Authorities and they found contraband goods in the vehicle. Trade Tax Authorities after investigation at their end, handed over the vehicle and the list of goods to the DRI, who after taking the possession of the vehicle carrying the misprint goods and contraband goods, searched the vehicle in the presence of independent witness and prepared a Panchnama. Statements of the appellant No. 1 and appellant No. 2 were recorded. A show cause notice was issued to both the appellants for confiscation of the smuggled goods as well as the misprint sheets, which as per allegation were used for concealing the smuggled goods.

The adjudicating authority confiscated the goods in the vehicle and imposed penalty on both the appellants. The adjudicating authority absolutely confiscated the miscellaneous foreign goods and ordered the confiscation of the provisionally released goods and truck. Since the misprint sheets were released provisionally on cash security, the said amount was appropriated as redemption fine. The appellants are in appeal against the imposition of the penalty and appellant No. 2 is also seeking the release of the confiscated misprint sheets.

3. The Id. Advocate for the appellants submits that the imposition of the penalty under Section 112 of the Customs Act is not correct, as it is on record that appellant No. 1 had ordered for misprint sheets and appellant No. 2 had dispatched the same. How and when the contraband goods got into the vehicle is not explained by the authorities and that the driver of the vehicle is not traceable. Further he submits that both appellants produced documents to show that there was a commercial transactions between them and they were not concerned with the smuggled goods.

4. The Id. DR on the other hand submits that the misprint sheets were used to conceal the smuggled goods. He further submits that both the appellants acting in total co-ordinations used the misprint sheets for concealing the smuggled goods. He places reliance on the fact that the huge quantity of 15590 kgs. of misprint sheets, generally is not verbally ordered and the challans were manipulated to show the quantity.

5. Considered the submissions made by both sides and perused the records. I find from the records that both the appellants have agreed to one fact that there was a commercial transaction between them to purchase and sell misprint sheets. I also find from the records that there is invoice from M/s. Jain Cans (of appellant No. 2) bearing invoice No. JO/33/2001-02, dated 19-1-02 for 15590 kgs. of defective misprint sheets. The said invoice clearly shows the transporters name as Transport Centre of India. I also find from records that M/s.

Transport Centre of India, the transporters have issued a consignment note/challan hearing No. 287/2001-02, dated 19-1-02 for 15590 kgs. of defective misprint sheets loaded from appellant No. 2's factory to be transported from

Kolkata to New Delhi. It is crystal clear that both the appellants contracted for the purchase and sale of defective misprint sheets. There is no iota of evidence on record to show that some other goods other than the defective misprint sheets were loaded in the vehicle from appellant No. 2's factory.

6. Further, I find from the list of the smuggled goods, that, the items are VCD/DVD players, recorders, photocopies, fax machines etc. There is no evidence to show these goods were concealed under the defective misprint sheets. The Panchnama drawn by the authorities does not state where the contraband goods were found, whether at the rear end of the vehicle or at the front end of the vehicle. On the contrary the plain reading of the Panchnama suggests to show that the contraband goods were found at the rear end of the vehicle and were observed when the door of the vehicle was opened. This itself suggests or points out a possibility, that the contraband goods may have been loaded on the way, by the driver of the vehicle. The only person who could have thrown light would have been the driver of the vehicle, but the authorities have not recorded any statement of the driver and nor were they able to trace him out to record a statement. In the absence of any corroborative evidence in any form, it would be a mis-carriage of justice, if a penalty is imposed. It is a settled law that, for imposition of penalty, it should be proved beyond doubt that the said persons should have done positive act by their commission or omission, to render themselves liable for imposition of penalty.

7. I find that in the case before me, there is no evidence suggesting, even, remotely, that the appellants had a role in the transporting of the contraband goods. In the absence of any evidence of their involvement in the smuggling of goods, no penalty is imposable on the appellants. I also find no reason to confiscate the defective misprint sheets and other scarp, since they were commercially tradable commodities.

8. In view of the above, the order-in-appeal deserves to be set aside.

I set aside the penalty on the appellants and allow the appeal with consequential relief. Since there is no reason to confiscate the defective misprint sheets and scrap, the confiscation of these goods are also set aside. Ordered accordingly.