Shri Yogender Singh Vs. C.C.E.

Shri Yogender Singh Vs. C.C.E.

SooperKanoon Citation : sooperkanoon.com/42200

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-20-2006

Judge : N T C.N.B.

Appellant : Shri Yogender Singh

Respondent : C.C.E.

Judgement :

1. On 31.8.1992; an FIR was registered by Gurgaon Police, about theft of vehicles manufactured by Maruti Udyog Ltd. Investigation led to the recovery of several stolen vehicles. While police authorities charged several persons including the present appellant, Mr. Joginder Singh for the theft, Central Excise Department issued show cause notice to recover duty on the stolen cars as well as to penalise the person concerned with the clandestine non-duty paid removal of the vehicles.

Under the impugned order, a penalty of Rs 1.0 lakh remains confirmed against the appellant.

2. The appellant was a mechanic at the relevant time with Maruti Udyog Ltd. The allegation was that the appellant was involved in the theft and stolen cars were recovered based on the statement made by the appellant and others before the police.

3. The submission of the learned consultant appearing for the appellant is that in prosecution, the appellant has been acquitted and in a such case, the penalty

imposed on him is not sustainable. It is also being contended that the statements made before the police authorities cannot be accepted in evidence. It is also being pointed out that apart from police investigation and statement made before police, there is no evidence with the Central Excise authorities.

5. The finding of the Judicial Magistrate on the question of theft of motor vehicles is to be found in para 14 of the judgment. That para may be read: 14. The link evidence connecting these purchasers to the accused and further with the evidence that these cars were kept in the possession of accused with their knowledge that the cars are stolen, is totally unproved on the record. There is no official from the Maruti Udyog Ltd. to say that these number of cars were removed dishonestly from their company nor any evidence from the registering authority that number of these cars are fake numbers so that there may be presumption of car being stolen. In the absence of this link evidence, main ingredient for proving of Section 411 IPC remains unproved i.e. it remains unproved that the cars recovered vide several memos on record, were actually stolen properly. The prosecution has miserably failed even to prove that these cars were actually purchased by the respective deposing witnesses from the accused in question only, whereas PW19 has actually failed to disclose the number of dispatched cars from the company, which could be precise evidence to connect the number of recovered cars to the allegation levelled by the complainant. But that also is totally missing on record.

6. Thus, the finding is that the very fact of theft does not remain established.

5. As against this, the finding of the learned Commissioner is that Shri Joginder Singh and Shri Praveen Kumar were the persons concerned with the "unlawful removal" and acquired the possession of the vehicles. That too on the same evidence, while the finding of the Judicial Magistrate, at the end of the trial, is that theft itself is not established.

6. It is well settled that duty liability is on the manufacturer. In the present case, the appellant was not the officer in-charge of removing vehicles after payment of duty. Therefore, he could come within the scheme of clandestine removal only if the charge of theft was upheld against him. Since no theft charge has been proved in

the trial, the finding of the Commissioner from the same evidence cannot be sustained.

6. In the result, penalty imposed on the appellant is set aside and the appeal is allowed.