**Yogesh Kumar Vs. Commr. of Cus. (Export)**

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**SooperKanoon Citation** : sooperkanoon.com/42336

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Apr-03-2006

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

**Appellant** : Yogesh Kumar

**Respondent** : Commr. of Cus. (Export)

**Judgement** :

1. Both appeals involved common issues and"are"hgnce"hgard"toggtjer anf disposgd off b{ this comool mrfep.

2, In thiq, case mn 14-1-04 odfkcerq mf DPI Nhava Sheva intercepted export consignments of Steel Welding Electrodes sought to be exported by M/s. Payal Exim under DEPB Scheme. On examination, it was found that there was no identification marks on the cartons of the goods for establishing co-relation of the goods with the Shipping Bills, that the Shipping Bills did not mention any brand name although Electrodes of three different brands, that quantities and sizes did not tally with those declared on the Shipping Bills and that the export goods appeared to be of very inferior quality, compared to the value declared. The cargo were seized on 20-0-2004 (Sic), statements of various persons including the CHA and the indenter and the exporter and of the appellant was recorded. Samples of the goods were drawn and tested and the goods were found to be Welding Electrodes composed of magnetic steel and welding flux - in other words the goods were found to be as declared. Shri Jayesh Gala Indenting Agent for the goods, stated that he had taken permission from the Jt. Commissioner of Customs to file manual shipping bills. For which he paid Rs. 2,00,000/- (Rupees two lakhs only) in cash, that he got all the 20 Shipping Bills assessed by the Appraising Officer Shri M.V. Choudhary to whom he paid Rs. 20,000/- (Rupees twenty thousand only); that thereafter the Shipping Bills were taken to the Assistant Commissioner of Customs Shri S.P. Punjabi, to whom he paid Rs. 20,000/- (Rupees twenty thousand only) immediately after the Shipping Bills were signed; that thereafter he got the goods examined by the appellant who was Preventive Officer, Customs whom he had already informed regarding over valuation of the consignment and paid him Rs. 4,00,000/- (Rupees four lakhs only) in cash; and that he had not paid any amount to Shri A.M. Pakhare, Supdt. of Customs for examination. This statement was retracted the few days later and thereafter Shri Jayesh Gala subsequently confirmed his initial statements. The appellants stated that on examination the goods were found as declared in the Shipping Bills, that the invoice attached thereto was seen for the purpose of valuation, that he was satisfied with the declared value and therefore accepted it and the value was also accepted by his Supdt. in-charge. He denied that he knew Jayesh Gala and that Gala had given money.

3. On the basis of the above investigation, show cause notice dated 12-7-2004 was issued proposing confiscation of the goods and imposition of penalty on several persons including the appellants. The charge in the notice against the appellant was that he had connived with Shri Jayesh Gala for clearing the highly overvalued and misdeclared export cargo for monetary considerations, that as an examining officer he was required to ensure proper valuation and to detect mis-declaration but he failed to do so, that he did not verifying the purchase invoices of the cargo to satisfy himself about the declared value even though the examination Order to him was to verify "DV fair". He was charged with the offence of aiding and abetting others in acts of commission or omission rendering the export goods liable to confiscation under Section 113(d) and (i) and hence rendering himself liable to penalty under Section 114 of the Customs Act, 1962.

4. The notice was adjudicated by the Commissioner of Customs who re-determined declared FOB value of the goods as Rs. 30,83,736/- (instead of Rs. 12,68,47,247/-), Order confiscation of seized goods with option to redeem the

same on payment of fine of Rs. 15,00,000/- (Rupees; fifteen lakhs only), imposed penalties on the Proprietor of M/s. Payal Exim, Shri Jayesh Gala and Ors. and imposed penalty of Rs. 3 lakhs (Rupees three lakhs only) upon the appellant herein.

5. In this case the goods are Gate Latches made of mild steel which were sought to be exported by M/s. Classic Corporation, Proprietary concern of Shri Jaikishan Adwani under DEPB Scheme, the charge against the appellant was the same as in the earlier case namely that of connivance with Shri Jayesh Gala for clearing highly over valued and mis-declared export cargo for monetary considerations and for aiding and abetting the commission of the offence which rendered the goods liable to confiscation, penal action under Section 114 of the Customs Act, was proposed him. The statement of Shri Jayesh Gala was relied upon against the appellant. The notice was adjudicated by the Commissioner, who re-determined the FOB Value of the goods as Rs. 36,94,538/- (instead of Rs. 3,93,56,352/-), confiscated the goods seized with an option to redeem them on payment, of fine"of Ps.

10,00,000/- (Rupges ten lakhs mnly), imposed penalty on the proprietor of the exporter imposed penalties on Shri Jaygsh Gala and others and the penalty of Rs. 1,00,000/- (Rupees one lakh onl{) on the appellant herein. Hence these appeals.

7. We find that the entire case rests upon the retracted statement of Shri Jayesh Gala, who has claimed to be the agent of the exporters and his statement has not stood the test of cross-examination as the Commissioner has rejected the appellants request to cross-examine him.

We further note that the inspection report of the appellant, on the shipping bill has been countersigned by the Superintendent of Customs Shri Pakhare, that the Order to verify the fair declared value of electrodes was carried out by verification with the local purchase invoice of electrodes, that samples of electrodes were shown to thg Superintendent who presumed that the declared value was correct and also relied upon the report of the appellant. It is also an admitted position that it is not a job of thg examiner to arrive at the correct valuation of the goods and therefore even though he had been directed to verify the declared fair value of the electrodes and he had done so with reference to their local purchase price, he cannot be held liable if the valuation is found to be incorrect. As regards his failure to detect that the electrodes were of three brands, this is not relevant for the reason that the goods were found to be Steel Welding Electrodes as declared and therefore there was no miq-dealaratiol mf the goods. In the case of gate latches the appellant verified the value with reference to the invoices attached to the shipping bills, during 10% examination of the goods which was directed to be carried out by him, he did not notice any discrepancy ald the findilg that he failed to detect that the gmods were mf three brands is again not relevant in the face of the fact that the goods were found to be gate latches as declared. As regards the finding that he failed to detect mis-declaration of quantity, has stand that there was no mis-declaration of quantity in respect of the percentage of goods examined by him has not been rebutted by the Revenue. In this case also Shri Pakhare the Customs Superintendent has countersigned examination report of the appellant. After being satisfied with the report.

8. In the above circumstances, we agree with the appellants that the material on record is not sufficient to uphold the charge of aiding and abetting so as"to tisit the appellant with penal consequences. We, therefore, set aside the penalties imposed upon him under both orders, and allow the appeals.