Shri Mukesh Kumar, Shri Yogesh Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-05-2007

Reported in : (2007)(117)ECC456

Judge : R Abichandani

Appellant : Shri Mukesh Kumar, Shri Yogesh

Respondent : Cc

Judgement :

1. The appellants challenge the order of the Commissioner (Appeals) upholding the penalties imposed on them under Section 112 of the Customs Act.

2. According to the Revenue, the appellants had participated in the commissioning of the fraud by signing the applications for DEPBs in respect of Shipping Bill Nos. 33 dated 03.01.2000; 6728 dated 25.07.2000; 7248 dated 07.08.2000; 4739 dated 17.12.1999; 4687 dated 14.12.1999; and 4410 dated 27.11.1999.

3. The learned Counsel for the appellants, has, by a communication dated 23.02.2007, submitted that, the appeals of the partners may be decided in the light of the decision of the Tribunal in Customs Appeal No. C/579/06-NB(S) decided on 01.12.2006 in which the Order of the Commissioner (Appeals) was set aside, relying upon the earlier order of the Tribunal dated 13.09.2006. That order was passed in respect of different DEPBs whereby the appeal of the Revenue was dismissed.

4. From the material on record, the role of all the appellants in fraudulently obtaining the DEPB licenses, has been duly established.

The following findings of the adjudicating authority in paragraphs 25 & 26 of the order which are confirmed by the appellate Commissioner are eloquent enough to depict the role played by these appellants: 25. I find that Shri Ashok Kumar @ Lucky (Noticee No. 3) was looking after all the business operations of the Noticee No. 2 including exports and foreign exchange. During investigations he admitted that the Bank certificates of Exports & Realization had been signed by him and that these were forged. He also felt sorry for the act of forgery resulting in defrauding the Govt. on the basis of documents signed by him. He admitted that the applications for DEPB's in respect of Shipping Bill No. 2900 dated 03/09/1999, 1566 dated 24/06/1999, 4040 dated 04/11/1999 and 4222 dated 16/11/1999 were signed by him. I further observe that another partner of the firm Sh. Mukesh Kumar (Noticee No. 5) also participated in the commissioning of the fraud by way of signing the applications for DEPB's in respect of Shipping Bill No. 33 dated 03/01/2000, 6728 dated 25/07/2000, 7248 dated 07/08/2000, 4739 dated 17/12/1999, 4687 dated 14/12/1999 and 4410 dated 27/11/1999 in the absence of Noticee No. 3. So both the Noticee No. 3 and 5 have actively connived with the firm in the commissioning of the fraud.

26. I also observe that as per records Sh. Tara Singh (Noticee No. 4) was looking after raw material and production of the firm. He was also looking after purchase of raw material and making arrangement of labour. I further observe that Sh. Yogesh Kumar (Noticee No. 6) was a partner of the firm. He was running a shop in the name and style of M/s LOOKS, Jalandhar. The Noticee No. 4 and 6 were party to profits/loss incurred to the firm and are accountable for the affairs of the firm their involvement in/knowledge of commissioning the fraud cannot be ruled out. Thus, they are liable to penal action under Section 112 of the Act.

The appellants were not innocent transferee of the DEPB licenses; but had actively participated in the forgeries committed for procuring the licenses, which were sold to others. In a similar context, the Hon'ble High Court of Punjab & Haryana, in Commissioner of Customs, Amritsar v.Parker Industries reported as

2007 (207) ELT 658 (P&H), has held that, the person actively participating in the fraud, cannot be compared with an innocent transferee. The Hon'ble High Court of Punjab & Haryana, in paragraph 10 of the judgment, has held as under: The Tribunal has not recorded any finding that the respondent-assessee did not commit any fraud, as alleged.

Correctness of the findings that the transferee, M/s Shiraj international Company Limited did not commit any fraud, having obtained DEPB without notice of the fraud, is not in question.

Merely because penalty has not been imposed on the transferee on that ground, it is no ground to treat the respondent at par with the said transferee. The original allottee has to be accountable under the law for committing fraud and also for its consequences. The order of the Tribunal, amounts to treating innocent and guilty at par. Guilt of the respondents stands established and consequences thereof have to follow. The respondent has, thus, been held liable for illegal import as a result of wrongful act of the respondent.

Judgments relied upon do not support the case of the respondent and are only in support of an innocent transferee, who may not be aware of fraud, which principle cannot be extended to the respondent against whom finding of fraud has been duly recorded, which has not been set aside or which has not been shown to be illegal.

5. Following the ratio of the decision of the Hon'ble High Court of Punjab & Haryana in Commissioner of Customs, Amritsar v. Parker Industries (supra), which was not brought to the notice of the Court deciding Appeal No. C/579/06, it would appear that the imposition of penalties on the appellants, whose dubious role in obtaining the DEPB licenses on the strength of forged documents was established, is justified, and the concurrent findings of the authorities below warrant no interference in these appeals. All the appeals are, therefore, dismissed.