Ashok Jaisswar Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-10-2008

Judge : S Kang, Vice, S T T.V.

Appellant : Ashok Jaisswar

Respondent : Cce

Judgement :

1. Heard both sides. Appellant filed this appeal against the imposition of penalty of Rs. 10,000/- under Section 114 of Customs Act 1962. Brief facts of the case are that, numerous shipping bills were filed for export of the goods with draw back claims. The draw back claims amounting to Rs. 40,55,368/- in the case of M/s Golden Exports and Rs. 41,28,290/- in the case of M/s Seven Seas Exports and Rs. 45,00,718/- in the case of M/s Sagar Trade Line were sanctioned. During investigation which was found that firm was non-existence that the value goods was mis-declared to claim the higher rate of draw back. The shipping bills were signed by the present appellant. The revenue is of the opinion that the present appellant abated the exporter in the exports of mis-declared goods and liable.

2. The contention of appellant is that there is no evidence on record to show that appellant connived with the exporter to get higher rate of draw back or the appellant received some extra consideration for signing the shipping bills. The appellant's contention is that without this evidence imposition of penalty is not sustainable. The contention is that the appellant is bonafide belief and after verifying the declaration made by exporter signed the shipping bills and the goods

were subsequently change by the exporter with the help of custom officers. The appellant relied upon the decision of the Tribunal in the case of Sushil Malik v. Commissioner of Customs, New Delhi reported in 2006 (195) E.L.T. 285 (Tri. - Del.) to submit that in absence of evidence that appellant advised the exporter to mis-declare the goods penalty under Section 114 of Customs Act is not sustainable. The appellant also relied upon the decision of the Tribunal in his own case, whereby the penalty imposed on the present appellant on the same grounds, was set aside vide final order No. 487-488/06 - SM (BR) dated 17/01/2006.

3. Contention of revenue is that appellant is a CHA (Customs House Agent) and in his statement under Section 108 of the Customs Act, he admitted that the license was let out by him for the Rs. 5,000/- per month. It was also admitted by him in addition to this amount, he also received a Rs. 5,000/- for the signing the shipping bills. The contention is that appellant without taking due care signed the shipping bills which resulted in getting the undue amount of draw back of Rs. 1.20 crores to the non-existent exporters. The contention is that in these circumstances, the penalty is rightly imposed.

4. We find that admitted facts of the case are that appellant is having CHA license. In his statement, he admitted that he is receiving Rs. 5,000/- per month for use of his license by other person. It is also admitted by the appellant he signed the shipping bills and required additional amounts. The case relied upon by the appellant the facts are different. In the case of Sushil Malik (Supra) relied upon the facts are different therefore there is not applicable on the facts of present case as the CHA had not advised the exporter to mis-declaration of goods. In the present case, the CHA signed all the shipping bills in which, the value of goods was mis-declared. In appellant's own case, Tribunal held that in absence of any malafide intention, the penalty is not sustainable. In the present case, we find as per the admission, the appellant has allowed the other person to use CHA license for mere Rs. 5,000/- per month and for signing present shipping bills extra amount was received by him. In these circumstances, the ratio of the above decision is not applicable on the facts of present case. In view of the admission made in the statement by the appellant, we find no merit in the appeal, same is dismissed.