P.N. Ram Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-17-2008

Reported in : (2008)(129)ECC78

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

Appellant : P.N. Ram

Respondent : Cce

Judgement :

1. Heard both sides. Appellant filed this appeal against the impugned order, whereby penalty of Rs. 25,000/- was imposed under Section 14 of the Customs Act. The penalty was imposed on the appellant, as he was working at that time as Inspector of Customs and he has taken the sample of the goods in question which were subsequently found to be mis-declared in respect of valuation to avail the higher draw back. The allegation is that without the direction of superior, he has withdrawn the sample which was subsequently shown to the higher authorities. The allegation is also that when he was directed to make market inquiry in respect of the impugned goods, he did not made any market inquiry and submitted the report on the basis of trade opinion given by un-concerned person showing that the declared value is correct.

Subsequently, it was found that the trade opinions were procured and no inquiry was conducted.

2. Contention of appellant is that in the show cause notice the allegation against him is that he was negligent and dereliction of duty. The contention is that on the allegation of negligence or dereliction of duty penalty under 114 of Customs Act is not sustainable. The appellant also submitted that the samples were withdrawn at the consignment at the oral direction of superintendent of Customs and which were subsequently placed on the file and shown to the higher authorities. It is also submitted that market authority marked to him and he could not find any person who was dealing with the similar goods, therefore, he requested to his colleague R.K. Saxena, Inspector of Customs who procured the trade opinions which were endorsed by him. Contention is that as per the statement of exporter Sh. Rajesh Sharma alias Sandeep Jain, who is the main person behind the fraud. Sh. R.K. Saxena has to look after the customs clearance and he has to receive Rs. 2.50 lakhs per container. Shri R.K. Saxena in his statement also admitted this fact but the proceedings against R.K.Saxena were dropped in the present impugned order. The contention is that, as there is no allegation against the appellant regarding his omission or commission for consideration to help the exporter, therefore, penalty is not sustainable. The actual person who help the exporter for consideration was R.K. Saxena against whom the proceedings were dropped, in spite of the fact that his statement was corroborated by the exporter. Appellant relied upon the following decision of the Tribunal to submit that for mere dereliction of duty penalty under duty of Customs is not sustainable. Commissioner of Customs, Bangalore v. M.Naushad .

3. Learned SDR emphasized the findings given by the Commissioner of Customs. He also submitted that as the appellant had not made any market inquiry and endorsed the trade opinions without verification, therefore, rightly penalties under Section 114 of the Customs Act.

4. In this case, the exporters submitted the goods for export with draw back claims. Certain consignments were cleared and export was allowed.

Investigation was conducted in respect of the last consignment and it was found that goods were over valued to receive the higher draw back claim. The allegation against the appellant in the show cause notice was that he was negligent and dereliction of duty.

5. We find that the statement of Shri Rajesh Sharma, exporter implicates Shri R.K. Saxena, Inspector of Customs, for abetting the exporter in respect of mis-declaration of the goods and for withdrawal of the undue amounts and it is also stated by the exporter that Shri R.K. Saxena is getting Rs. 2.50 lakh per container. Shri R.K. Saxena in his statement admitted these facts. We find that Shri R.K. Saxena who was co-noticee in these proceedings but no penalty was imposed on Shri R.K. Saxena. The present appellant who was working as a Inspector of Customs withdrawn the samples and the same was shown to the higher authorities and he was directed to make the market inquiry and in his statement he admitted that as nobody was found who give trade opinion in respect of the same or similar goods, therefore, he requested R.K.Saxena who was his colleague to help him. Shri R.K. Saxena obtained the trade opinions which was endorsed by him. We find that in the statement of exporter, there is no awarement that present appellant has done same thing for some consideration. Further, we find that as there is allegation of negligence and dereliction of duty only in the show cause notice and the Tribunal in the case decision relied upon by the appellant after relying upon the previous decision held that failure to perform the duty of scrutinizing/ examining the document as best be dereliction of the duty and penalties Customs Act are not sustainable.

6. In the present case, we find even in the show cause notice, the allegation is only of negligence and dereliction of duty. There is no allegation that the same has been done for some consideration.

7. In these circumstances, we find merit in the contention of the appellant. The impugned order is set aside and the appeal is allowed.