Collector of Customs and Central Vs. P.C. Agarwal

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-12-1990

Reported in : (1991)(51)ELT124TriDel

Appellant : Collector of Customs and Central

Respondent : P.C. Agarwal

Advocate for Def. : Shri. M. Chandrasekharan

Judgement :

1. The applicant Collector of Customs and Central Excise, Kanpur has proposed the following alleged questions of law said to have arisen out of Order No. A/438/89-NRB dated 31-10-1989 passed by the Tribunal in Appeal No. C/3518/87-NRB filed by the respondents Shri P.C. Agarwal against the present applicant - "1. What had prevented the Respondent from placing on the record of Appeal, the Show Cause Notices issued Whether the apprisal of the results of enquiries and investigations as also all the evidence on record militates against the version of the Respondent 2. Whether a party can hold out goods as "MADE FROM GERMANY" conveying the imported nature of ingredient to the public at large but take a different stand in the Departmental proceedings 3. Whether or not the reliance could be placed on shifting nature of defence pleas from time to time made by the Respondent 4. Whether or not the story of the defence is false in view of the BOGUS BILLS of non-existent firms and of untraceable person named Vijai Kumar whom only the Respondent was acquainted with And whether the burden of proof on the Customs Authorities stood discharged and could be relied

upon for concluding that the goods had illegally been imported 5. Whether or not there ought to be reasonable parameters for discharging the burden of proof by the Department; particularly when the clues given by the Respondents were found to be fictitious and bogus 6. What had prevented the Respondent either from producing the Importer or the person who supplied the goods and who at the instance of the Respondent sought for anticipatory bail and remained untraceable 7. Whether or not the decision of the Tribunal quoted by the Respondent are in the nature of judgments in personem and not judgments rem 8. Does not the Order of the Tribunal render the judgment of the Supreme Court cited by the Adjudicating Authority, NUGATORY ?" 2. Shortly stated the facts of the case are that on a tip off the officers of Customs and Central Excise, Bareilly seized 20 plastic phials of 500 gms. each containing Polladium Chloride totally weighing 10 kgs. from the Factory of M/s. Indian Turpentine & Rosin Co., Bareilly said to have been manufactured by M/s. Degussa of West Germany and supplied by M/s. Standard Chemical & Biological Manufacturing Co., Nag-pur - respondent herein and after usual adjudication proceedings the Collector of Customs and Central Excise - applicant herein- vide his Order-in-Original No. 1-Cus/Collr/87 dated 14-9-1987 ordered for the confiscation of the seized goods under Section 3(2) of Import & Export (Control) Act, 1947 read with Section lll(d) of the Customs Act, 1962 with an option to M/s. Standard Chemical and Biological Manufacturing Co., Nagpur to redeem the same on payment of a fine of Rs. one lakh with duty at the appropriate rate and also imposed a personal penalty of Rs. 1 lakh on Shri P.C. Agarwal, Prop. M/s.

Standard Chemicals & Biological Manufacturing Co., Nagpur. Ag-grieved by the said adjudication order the respondents filed his appeal bearing No. C/3518/87-NRB before the Tribunal which was allowed by it vide its Order No. A/438/89-NRB dated 31-10-1989 inter alia holding that it was not proved by the department that the goods were smuggled ones.

3. We have heard Smt. Dolly Saxena, learned SDR for the applicant and Shri M. Chandrasekharan, learned counsel for the respondents.

4. Smt. Dolly Saxena, learned SDR while touching on all the questions as reproduced above mainly concentrated over Question No. 4 which is to the effect that when the Department has provided evidence, that the Bills Vouchers were bogus and the supplier of the goods to the appellant, Shri Vijai Kumar was not traceable and he was known only to the Respondent and the Department had, therefore, discharged its burden in coming to the conclusion that the goods have been illegally imported, and, therefore, the finding of the Tribunal that the burden of proof in the case rested with the Department was incorrect.

5. In reply Shri M. Chandrasekharan, learned counsel took us through each and every proposed alleged question of law and submitted that these questions relate to the appreciation of the evidence on record and therefore, are not questions of law meriting any reference to the Hon'ble High Court.

6. We have considered the submissions and would like to record as follows - 7. This is not a question of law. As per practice of the Tribunal original records are not summoned while admitting and hearing of the appeals filed by the parties. Instead, as per rules both the parties to the lis are given liberty to file the paper book containing copies of the documents on which they rely upon for the purpose of appeal. There is no compulsion on either party to file a particular document except the impugned orders until and unless specifically called for by the Tribunal in the interest of justice. If in the instant case copy of the show cause notice issued to the respondent was not filed by him in his appeal the Collector of Customs and Central Excise, the applicant herein could have filed the same at the time of hearing of appeal on merits. Moreover there is a virtual reproduction of the show cause notice in the Order-in-Original passed by the Collector of Customs and Central Excise and the same was referred to by both the parties at the time of hearing of the appeal on merits and was considered by the Tribunal while passing the said order dated 31-10-1989. As regards the question as to whether the ap-prisal of the results of enquiries and investigations as also all the evidence on record militates against the version of the respondent (appellant in the appeal), it may be stated that it is a question of appreciation on record. Consequently this question is not refer-rablc.

8. All these questions relate to the burden of proof and its discharge.

At the time of hearing of the appeal on merits both the parties with reference to the evidence on the record and the attending circumstances argued at length on these questions and the Tribunal after taking into consideration the entire evidence available on the record and the attending circumstances concluded that the department has failed to prove that the subject goods were either of foreign origin or were smuggled one. In dealing with this aspect, the Tribunal has in its Order dated 31-10-1989 under reference raised this issue in para 8 of the Order as under - "Para 8...the issue in question is whether the goods seized viz.

Polladium Chloride is liable for confiscation and other attending consequences on the fact that they were of foreign origin The circumstances under which they were supplied to the Indian Turpentine and Rosin Co. Ltd. was through a tender floated by them and the appellant has procured it from another supplier. The Polladium Chloride was found in containers which bore labels indicating the origin of the chemical as "Made from Germany". The labels were torn in some cases and the cap on which the containers was fitted was not a pilfer-proof cap and the same was fixed by adhesive tapes. The appellant claims that it was indigenous Polladium Chloride repacked in the containers having a foreign label. Will this alone provide sufficient proof that it was of foreign origin The supplier of the chemical to the appellant has not been interrogated, as he was not available, in which case how has the Department come to the conclusion that it was imported into India, without payment of duty The material which was exhibited during the hearing was found to be in containers, and it is a matter of doubt whether this alone will provide sufficient proof that the goods were brought into the country through illegal means and are therefore liable to confiscation and chargeable to duty.

Moreover the goods are not notified under Section 123 of the Customs Act and the burden of proving that they are not smuggled does not rest with the appellants, neither is it a notified item under Chapter IV-A of the Customs Act. The Appellants have further maintained that this is not a banned item under the I.T.C. Policy.

The Collector in his order does not make any allegation on the point of import being banned. The whole issue has been thrashed out on the basis that the labels affixed bore foreign marking and no evidence has been let in about the fact that they were repacked. But one can take a contrary view that no evidence is made available by the Department that this was in original packing and was of foreign origin when the packaging indicated that labels were torn and the caps were affixed with adhesive tapes. The findings that the supplier of the chemical was not traceable and had given a fictitious address will not by itself render the case as supporting the view that the goods were illegally imported. The Department has not gone beyond this stage to further investigate about the genesis of the goods at its first importation. Thereby being not a notified item, the burden of proving that it was acquired by illegal means rests with the Department..." 9. This question also relates to the appreciation of the evidence on record. The non-production of the Importer or the person who supplied the goods to the respondent may be a circumstance against the respondent but that by itself is not sufficient to hold that the subject goods were of foreign origin or they were smuggled, more particularly, when he was reported to be untraceable. This circumstance was also taken note of by the Tribunal while appreciating the entire evidence on the record both documentary and circumstantial as could be seen from para 8 of the order as reproduced above. Hence this question is also not referable.

10. This question is also not referable and appears to have been framed out of ignorance. The cases cited by the learned Consultant on behalf of the respondent, who was appellant in the appeal relates to the interpretation and meaning of Section 123 of the Customs Act and Chapter IV-A of the same Act and therefore these decisions neither can be termed as judgments in personem or judgments in rent. Hence this question is not referable.

11. This question also appears to have been framed out of ignorance.

The judgment of the Apex Court rendered in the case of Kanungo & Co. v.Collector of Customs, Calcutta, 1983 (13) ELT 1486 was referred to by the Adjudicating Authority in its Order-in-Original. This judgment relates to the interpretation of Section 167 (8) of the erstwhile Sea Customs Act, which deals with the burden of proof. While deciding the said case their Lordships observed that how the burden of proof which lay on the Customs Authorities can be discharged by the Customs authorities. It is significant to note that in para 17 of the said judgment it was observed that the fact that one wrist watch (in that case) was not shown in the Stock Register is not material to show that it has been illegally imported. In the instant case the Tribunal while recording its Order took each and every circumstance and the provisions of the law applicable to the present case into consideration. Hence to say that the findings of the Tribunal would make the judgment rendered by the Apex Court in the case of Kanungo & Co., supra, nugatory is only to be stated to be rejected.

12. In the result the reference application is rejected as no questions of law meriting any reference arises out of the Order passed by the Tribunal.