

Peak Craft Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-20-1990

Reported in : (1991)(53)ELT122TriDel

Appellant : Peak Craft

Respondent : Collector of Customs

Judgement :

1. The brief facts of the matter, which has come up before us for the second time, are that the appellants imported two consignments of measuring instruments under bills of entry Nos. 8265 & 8263 dated 28-1-88 and declared values of Rs. 1,05,455 and Rs. 65, 853 respectively. After some investigations the Collector of Customs adjudicated the matter ordering enhancement of the value of the two consignments to Rs. 1,22,885 and Rs. 1,09,598/- respectively, confiscating the goods for violation of Sections 111(d) and (m) of the Customs Act but with an option for redemption for Rs. 1 lakh and imposing a penalty of Rs. 25,000/-. Hence this appeal.

2. Shri A.K. Jain, the learned Advocate submitted that the Department relied on the statements of Shri Ketan Dalai who was supposed to sell the imported goods to the actual users, and of others. He submitted that inspite of requests made, the cross examination of the witnesses was not allowed and, therefore, the proceedings are ab-initio void, the order having been passed in violation of the principles of natural justice.

3. Stating that the appellants made several imports of the same goods earlier and also subsequently without being questioned by the Customs, the learned Advocate pleaded that the documents filed by the appellants were not considered by the Collector. The learned Advocate denied that there was any sale of the licence but submitted that even if they allowed Shri K. Dalai to undertake certain activities on their behalf, such a situation would not amount to a violation of the paragraph 118(1) and (2) of the handbook for 1985-88. But the provisions of the handbook do not amount to law and, therefore, Section 111(d) is not attracted. He also argued that paragraph 118(2) of the handbook violates Rule 5(3), (last proviso) of the Import Control Order and, therefore, is void. Shri Jain stated that the appellants are a registered export house and in terms of public notice No. 47 of ITC dated 7-9-1988 paragraph 118(2) was deleted. The learned Advocate also argued that if there was any violation of the conditions of the licence it was for the licensing authorities to take action and not for Customs. Referring to the functions of the importers in Section 2(26) of the Customs Act, Shri Jain argued that the appellants owned the goods (which are still with the Customs), they possessed all papers and documents, and stated so, without contradiction, before the Collector.

4. On the question of valuation Shri Jain argued that the price list relied on by the Customs did not show whether the price was FOB (as held by the Customs) or CIF (as claimed by the appellants). Therefore, according to the learned Advocate the invoice and the price list should be read together and reliance placed on the invoice.

5. Shri Prabhat Kumar, the learned DR opposing the arguments submitted that the show cause notice listed six cheques issued by Shri K. Dalai to the appellants. He argued that the appellants did have the documents and papers as claimed by Shri Jain, but in view of what was stated by Shri Dalai and others (Shri Shah and Vohra) the papers should be considered as manipulated documents only and should not be relied on.

He referred to the licence issued and argued that the paragraphs 13, 26 and 27 of the Policy for 1985-88 applied to the licence which was issued subject to all existing conditions. He argued that the licence itself makes this position clear and

that the goods were imported contrary to the provisions of Section 11 of the Customs Act, Import Control Order 1955, Rule 3(2) and Section 3(2) of the Import and Export Control Act. Therefore, Shri Prabhat Kumar argued, the licence was not valid and the goods were correctly confiscated under Section 111(d) as also (m) of the Customs Act.

6. Referring to the dispute about valuation the learned DR argued that the price lists are not issued on CIF basis as the ultimate destination is not known and only if such destination is known the question of freight and insurance would arise.

7. Shri Jain in his rejoinder submitted that the invoice should be acted upon and referring to earlier and later imports (details of which were not placed before us) submitted that the Import Policy was not law; the learned Advocate cited and relied on the Bombay High Court judgment in Union of India v. Alok Exports reported in 1989 (24) ECR 677. Referring to Section 11 Shri Jain submitted that this Section refers to Notifications only and referred to a judgment of Tribunal in Orbital Enterprises and Ors. v. Collector of Customs, Calcutta reported in 1988 (15) ECR 211 (Tribunal). He pointed out that Section 3(1) of the Import and Export Control Order also refers to Notification in Gazette.

8. We have considered the arguments of both sides. Two questions arise in this matter and these relate to (i) valuation and (ii) validity of the licence.

9. In so far as the valuation is concerned the Customs Department relied on the price list. We are unable to accept the plea of the appellants that the prices appearing in the price lists should be taken as GIF. The learned DR's argument that the price lists do not show CIF prices is quite correct. Shri Jain's argument that other similar goods imported by them on earlier and later occasions having remained completely unsubstantiated, we uphold the Collector's order about the valuation of the goods.

10. In so far as the validity of the licence is concerned, the Department's case is that the appellants trafficked in the licence having sold it to Shri K. Dalai contrary to the provisions of the para 118(5) of the Handbook 1985-88. The evidence in this regard consists mainly on the statement of Shri K. Dalai and of Shri Shah. The

Collector refused cross examination of these witnesses. No documentary evidence of sale is produced before us. There is only a reference to six cheques issued by Shri K. Dalai to the appellants, but the evidence of the cheques is not sufficient to hold that trafficking in licence was indulged by the appellants. There is no documentary evidence of any sale and in the absence of cross examination of the witnesses it would not be correct for us to come to the finding that there was trafficking. Besides, after perusing the proviso 2 to Rule 5(3) of the Import Control Rules, we find much force in the learned Advocate's arguments that paragraph 118(5) of the Handbook is contrary to the Rules. It was not denied by the Revenue that in September 1988 (subsequent to the importation) this paragraph was omitted. The reason could be that it was not in accordance with the provisions of the Rule.

In any event, we have to set aside the Collector's order for lack of acceptable evidence regarding trafficking of the licence.

11. As a result we uphold the enhancement of the value of the goods but set aside the confiscation of the goods. Considering that the evidence placed by the appellants before the Collector in relation to the value of the goods was not considered and that there is no allegation of any illegal remittance of money abroad, we set aside the penalty also.

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