Goodluck Tyre Services Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-11-1991

Reported in : (1992)(42)LC321Tri(Mum.)bai

Judge : P Desai

Appellant : Goodluck Tyre Services

Respondent : Collector of Customs

Judgement :
1. This appeal is directed against the order in original No. 78/Addl.

Collector/90 dated 27.7.1990 of the Addl. Collector, Ahmedabad, ordering confiscation of 202 tyres seized from the premises of the appellant and granting option to pay fine of Rs. 35,000/- in lieu of confiscation and also imposing personal penalty of Rs. 2,000/- on the appellant.

2. On 7.8.1989 a search was carried out at the factory and godown premises of the appellants, who were indulged in tyre retreading business and found 67 tyres from the factory and 135 tyres from the godown premises, which were though used and old, were of foreign origin and without any cut and were in condition of being used with or without retreading. As no plausible explanation was given for licit acquisition the same were seized. Statement of Shri Sheikh Razak alias Babubhai, a partner in the appellant firm, was recorded on 9.8.1989 where he stated to have purchased those tyres under regular bill from M/s Gupta Tyres and

M/s Ganpati Tyres Services both of Delhi. During the investigation, statement of Mr. J.T. Gupta, of M/s Gupta Tyres was recorded on 7.11.1989 where he admitted to have sold 897 old tyres to the appellant between 10.4.1987 to 6.2.1989 and added that on 19.7.1986, he had purchased about 850 tyres of foreign origin from one Shri G.K. Sheikh of Ahmedabad who reported to have purchased those tyres in customs auction sale at Salaya and that some of the tyres were also sold to the appellant. Mr. G.K. Sheikh of Ahmedabad in his statement recorded on 2.12.1982, stated to have purchased tyres of foreign origin at Salaya customs auction sale on 28.1.1986. On enquiry with the Asstt.

Collector, Customs Porbunder, it was reported that 840 tyres were sold at Salaya on 28.1.1986 without any cut. On conclusion of the investigation, however, a show cause notice dt. 22.12.1989 was served on the appellant as also against M/s Gupta Tyres and impugned order was passed where M/s Gupta Tyres were exonerated.

3. Heard Shri W. Christian, the ld. Advocate who submitted that there was no proof of the tyres being smuggled one and that the documents produced indicated them to be those which were sold at auction sale at Salaya.

4. Shri B.P. Singh, the ld. JDR however submitted that the link between the articles at the auction sale and articles seized had not been established.

5. The documents produced include two challan for payment of purchase price by Shri Gulam Mustafa K. Shaikh at the auction sale. Copy of the certificate dt. 21.3.1986 issued by the Supdt. of Customs, Salaya certifying said Gulam Mustafa Shaikh to be the purchaser of 84 tyres and permission for removal thereof, is also brought on record. There is also an averment in the order in original itself that the Asstt.

Collector, Porbunder has certified that tyres sold at Salaya did not bear any cut. Thus, it can reasonably be presumed that tyres of foreign origin were delivered to Shri Gulam Mustafa Sheikh without any cut.

Shri Gulam M. Sheikh states to have sold the tyres to M/s Gupta Tyres and Gupta Tyres testifies to have sold some of them to the appellant.

The sale transaction have been supported by necessary invoices. The evidence on record gives rise to a circumstance which indicate that the tyres seized can be the tyres which were auction sold by the department at Salaya. The department has however not adduced any evidence to prove the contrary and to establish that this tyres could not be those which were sold at auction sale.

6. A suggestion is made that Shri Gulam M. Shaikh could have purchased the tyres in auction only if he was an actual user. Said Shri Gulam M.Shaikh has however pleaded that he did have a rubber factory in the name of Gujarat Rubber Moulding Industry. However, assuming that Gulam M. Shaikh could not have purchased the tyres in auction sale, that could at the best, hold Gulam M. Shaikh liable to penal action but could not make the tyres as those illicitly imported and liable to confiscation under Section 111(d) of the Customs Act and the appellant liable to penalty under Section 112 of the Act.

7. In the result, I hold that the order of the authority below is not sustainable and is therefore set aside. The appeal is allowed with consequential relief.