Techno Electronics Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-07-1992

Reported in : (1992)(60)ELT587TriDel

Appellant : Techno Electronics

Respondent : Collector of Customs

Judgement :

1. Aggrieved by the order of the Additional Collector of Customs confiscating absolutely 1957 tape deck mechanisms and imposing penalties on several persons connected with the offence of illegal import into India for the purpose of stock and sale without valid import licence, the-above appeal has been preferred in the following circumstances.

2. On 10-7-1986, the officers of Customs (Preventive) searched the premises of M/s. Okara Trade Parcel Carriers, Rohtak Road, New Delhi and the result of the search revealed video magnetic tapes in pancakes of foreign origin packed in card board boxes. A further search revealed recovery of electronic goods of foreign origin, cabinets, tape deck mechanism, mounted printed circuit boards and speakers, etc. The statement of one Shri Gulam Hassan, Proprietor of M/s. Bharat Electronics Ltd., Srinagar was recorded on 16-10-1986 in which he stated that he was engaged in the business of sale and purchase of electronic goods and that he started the firm about six months ago and during the period he dealt in trading of mini TV sets and parts which he used to purchase from Delhi and sell in local markets of Srinagar.

He stated that during the first week of May 1986 he visited Lajpat Rai Market where he met a Broker who introduced him to M/s. Techno Electronics i.e. the appellant firm herein, for the purchase of tape deck mechanism and that he met Sardar Rajinder Singh, Proprietor of the appellant firm and the second appellant herein and that he entered into an agreement for supply of 2,000 sets of tape deck mechanism with motor head at the rate of Rs. 102 per piece; that the payment was to be made within one month after the supply of goods; that no payment was made in advance; that Shri Rajinder Singh agreed to supply these goods during July 1986; that thereafter he went back to Srinagar and came to contact M/s. Techno Electronics who guaranteed delivery of the goods in 3 or 4 instalments as the goods were not readily available in bulk. He further stated that the goods were delivered between 2nd and 8th July 1986 under 4 separate bills. The statement of Shri Rajinder Singh, Proprietor of Techno Electronics was recorded on 30-10-1986 in which he stated that he was dealing in the manufacture and sale of tape deck mechanism and that he normally supplies TDM with six volts motor of Indian and foreign origin and that he never supplied TDM with micro motor of 9 volts; that BEL had placed an order for over 2000 pieces of TDMs in the first week of May 1986 and thereafter he had supplied 1957 TDMs under the bills referred to in the statement of Shri Ghulam Hassan. On 29-12-1986 a further statement of Shri Rajinder -Singh was recorded in which he inter alia stated that TDMs found in the cartons containing samples was neither supplied nor manufactured by his firm; that he has not imported any motors since 1985 and the only stock lying with his firm are 6 volts and 12 volts motors and since then he had not used any imported motors. He further stated that the TDMs sold under the 4 bills referred to above were all fitted with 6 volts motors supplied by Shri Jagan Micro Motors Ltd. and fitted with OG-66 magnetic head which, he had imported from Japan along with rubber components; that all other components were either manufactured or locally purchased by him; that the TDM which was shown to him as having been recovered by the Customs authorities was fitted with 9 Volts Mabuchi make motor and magnetic tape head (both Japanese) which he had neither supplied nor manufactured.

3. As it appeared to the Department that the seized goods of foreign origin collectively valued at over Rs. 46 lakhs had been illicitly imported into India for the

purpose of stock and sale without valid import licence, show cause notices were issued to several parties connected and involved in the alleged offence. In so far as the appellant is concerned the allegation was that the 1957 pieces of TDMs claimed by Shri Ghulam Hassan, Proprietor of Bharat Electronics Ltd. as of Indian origin were found to be of foreign origin and in the absence of evidence of lawful import the same were liable to confiscation and the appellants liable to penal action. The adjudicating authority confiscated the TDMs holding that Techno Electronics had tried to cover 1957 pieces of TDMs supplied by issuing vouchers for indigenous goods in connivance with BEL with the knowledge that the 1957 pieces of foreign origin are smuggled goods and are liable to confiscation. A penalty of Rs. 5.000/- was imposed upon M/s. Techno Electronics and a penalty of Rs. 7.500/- imposed on Shri Rajinder Singh. Hence these appeals.

4. W& have heard Shri B.B. Khare, learned Counsel and Shri Ashok Mehta, learned SDR, considered their submissions and gone through the impugned order.

5. The contention of the learned Counsel that there is very slender thread of evidence against the appellants has great force. The appellant has been linked with the offence because he could not tell the name of the owner of the BEL, Srinagar as the said firm was introduced to him by some party of the Lajpat Rai Market and he could not tell the name and address. We, however, note that as early as on 20-2-1987 in response to the show cause notice the appellant informed the Department that BEL approached them through one Shri B.D. Kochar, Proprietor of M/s. Allied Sales Corporation, 242, Lajpat Rai Market, Delhi for purchase of 2,000 TDMs and placed the order for the same vide their letter dated 15-5-1986 and that they delivered 1957 pieces of TDM at the factory gate to the representative of Bharat Electronics vide bill No. 1453 dated 2-7-1986, 1454 dated 4-7-1986,1455 dated 5-7-1986 and 1456 dated 8-7-1986. We also find that the Additional Collector has accepted the contention of M/s. Techno Electronics that they never supplied any TDM with 9 volts micro motor to M/s. Bharat Electronics.

We also note that right from the very beginning the stand of Rajinder Singh has been consistently that the seized TDMs were different from the TDMs manufactured, marketed and supplied by his firm as the seized samples were fitted with 9 volts micro motors and whereas their firm manufactures TDMs fitted with 6 and 12 volts motor. The finding of the adjudicating authority that it cannot be understood how a manufacturer can give credit facility to a distant buyer without knowing his credentials is also incorrect because as we have mentioned earlier in the order the appellant had supplied the name of Shri B.D. Kochar. The appellant had in their reply to the show cause notice, furnished the name of Shri B.D. Kochar as the person through whom they sold the goods to Bharat Electronics and this fact appears to have been totally overlooked by the adjudicating authority. The order does not disclose any reasonable, justifiable basis for imposition of penalties upon them and appears to have been based only on flimsy grounds.

6. In the light of the above discussions we set aside the penalties imposed upon the appellant & the firm and direct refund of the amounts of penalties if deposited. The order is modified to the extent set out above.

8. Before we part we would like to place on record our deep appreciation of the able assistance rendered to the Bench by both sides.