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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-16-1994

Reported in : (1994)(72)ELT42TriDel

Appellant : Darshan Singh

Respondent : Collector of Customs

Judgement :

1. This is an appeal against the order of the Additional Collector of Customs (Preventive) Muzaffarpur dated 27-1-1989.

2. Learned Counsel stated that the appellant, Darshan Singh is the owner of the truck No. DIG-2605 which was detained along with the other trucks by the Customs for allegedly carrying contraband goods. The truck was subsequently released provisionally by the order of the Superintendent dated 11-10-1988 on the appellant depositing Rs. 50,000/- and executing a bond for Rs. 3 lakhs.

3. It was his submission that the goods alleged to have been smuggled which were found in the truck had been loaded by the driver without his knowledge or permission and he had no connection with the contraband goods and their carriage and, therefore, it is the fault of the driver.

4. It was his submission that actually he was ill and had gone away to his village and was away for nearly two months when the seizure took place and, therefore, he was not aware of what his driver had done and, therefore, neither the truck was

liable to confiscation nor he was liable to penalty.

5. It was also his contention that the show cause notice itself was defective inasmuch as it mentions about the legal importation and then also invokes Section 123 even in respect of almonds which are not notified goods.

6. It was his contention that even if the word 'legal' could be taken as a typographical error and the word is read as illegal, the fact remains that the officers had proceeded on a wrong premise that the almonds were notified goods and that is why they have not even bothered to discharge the burden which was actually theirs and had relied merely on the statement of the driver. It was his contention that the driver had clearly stated in his statement that he had loaded the goods entirely on his own without the knowledge or permission of the appellant. This itself supports his contntion that he has no knowledge and he was in no way concerned with the smuggling or carriage of smuggled goods.

7. It was also his submission that the show cause notice has invoked Section 112 without mentioning either Clause 'a' or 'b'. It was also therefore, defective and there is already lot of case law in this regard.

8. Learned Counsel further submitted that in fact the order is also bad on the ground that it confiscates the truck (absolutely) which had already been released provisionally and was not available for confiscation.

9. Learned DR stated that from a reading of the show cause notice itself, it would become apparent that how the Customs staff intercepted two trucks and one of them which belongs to the appellant was found to carry contraband goods such as almonds concealed under coal and the driver confessed that the foreign almonds were packed in packages and on his information, the other truck with contraband goods such as synthetic yarn and Chinese torches concealed under the coal was also seized.

10. The word 'legal' in the show cause notice is a typographical error and is meant to indicate illegal import from Nepal and the reasonable belief has been shown for the purpose of seizure.

11 In fact, this is a well known mode of illegal diversion of goods imported for Nepal and the documents which the truck driver was carrying were all found to be fake and the addresses of the consignor and the consignee were bogus.

12. Therefore, irrespective of Section 123 the truck and the goods were liable to confiscation.

13. It was also his submission that in his statement the driver has mentioned both normal carriage charges and abnormal or extra charges which he used to earn for carrying smuggled goods and also mentions that these extra charges were to be shared with the owner. This itself shows that the driver used to carry smuggled goods with the consent of the owner and, therefore, it was immaterial as if during a particular period, he was in his village; and if his consent or agreement in the exact nature which has not been specified, is important and the fact sharing of the extra charges between the driver and the owner is significant.

14. Hence, the truck as well as the goods were liable to confiscation and the owner and the driver are liable to penalty which has been rightly imposed.

15. We have considered the above submissions. We observe that the minor typographical errors do not vitiate a show cause notice particularly when their meaning becomes clear when the paragraph or notice is read as a whole.

16. Similarly from the statement itself, it is clear that the goods were admittedly of foreign origin. It is also note worthy that the seizure and confiscation of the goods being carried has not been challenged and the driver has admitted the offence. In so far as the question of knowledge and liability of the owner to penalty and of the truck to confiscation is concerned, we observe that since both the Department and the appellant are relying on the statement of the driver and this statement also mentions inter alia that they used to earn extra charges for carrying contraband and this used to be shared between the driver and the owner, this itself shows that the truck was being deliberately used for carrying contraband with the consent of the owner on the basis of an understanding. In the circumstances, we hold that the truck was liable to confiscation and the appellant was liable to penalty. However, we observe that the learned Counsel is correct in pointing out that the truck having

been released provisionally on cash deposit and bond, could not be confiscated again unless it was made available for confiscation and there is no indication thereof.

Secondly, the Department cannot confiscate the truck absolutely and also retain cash security and the bond with it.

17. In the circumstances, we set aside the order of absolute confiscation. But in view of the liability to confiscation, allow the Department to retain Rs. 25,000/- out of the cash security as an adjustment towards fine in lieu of confiscation which would have been otherwise imposable and stands imposed by our order.

18. We also direct the Department to release the bond already executed.

Further, looking to the totality of facts and circumstances, we also reduce the penalty from Rs. 20,000/- to Rs. 5,000/- keeping in view inter alia the loss already suffered. It is ordered accordingly.

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