**Nitul Data Systems Pvt. Ltd. Vs. Collector of Customs**

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**SooperKanoon Citation** : sooperkanoon.com/7455

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Apr-07-1994

**Reported in** : (1994)(72)ELT309TriDel

**Appellant** : Nitul Data Systems Pvt. Ltd.

**Respondent** : Collector of Customs

**Judgement** :
1. M/s. Nitul Data Systems Pvt. Ltd. have filed this appeal against the order of Addl. Collector of Customs. The Addl. Collector of Customs in his order had held : "I have carefully gone through the case records. The goods were examined at Indira Gandhi International Airport first and found as per invoices. Had there been any shortage, party's representative who was present there should have objected. It was established that the shortage of the goods was noticed only after the proper officer had made an order of warehousing the goods. In view of the findings referred to above, I hereby confirm the demand of Rs. 91,358/- as Customs duty."
2. Briefly stated the facts of the case are that the appellant imported components for computers and warehoused the same after removing them from the Air Cargo Complex at I.G.I. Airport to the Public Bonded Warehouse at Okhla. At the time of finalisation of the in Bond Bill of Entry, goods were examined at first port of importation in the presence of the appellant's representative and found as per invoices. Later when the goods were examined before bonding, some of the components i.e., 102 pieces and 319 pieces of ICS and 258 pieces of Resistors valued at Rs. 93,221/- were found short. It was alleged that the shortage of the

goods was detected after the proper officer had made orders for warehousing and therefore the appellant was liable to pay duty amounting to Rs. 91,358/- on the goods found short. Accordingly a show cause notice was issued to the appellant asking them why customs duty amounting to Rs. 91,358/- should not be recovered from them.

3. Shri D.P. Varshney, the ld. Consultant appearing for the appellant submitted that at no point of time, the custody of the goods was handed over to the appellant; that there was no physical possession of the goods delivered to the appellant; that the goods always remained under customs supervision and even while transporting the goods from I.G.I.Airport to Okhla the goods were transported under Customs supervision and therefore the appellant should not be asked to pay duty on the goods found short.

4. Shri B.D. Bhagat, the ld. JDR appearing for the respondent submitted that the goods before removal from the Airport were examined in the presence of the appellant or his representative; that at that time there was no deficiency noticed; thus the deficiency in the goods, if any, occurred during the course of transport; that the appellant had executed the warehousing bond under Section 59 of the Customs Act which required proper accounting and payment of duty on the goods warehoused.

Reiterating the findings of the lower authorities, the ld. JDR submitted that the lower authorities had correctly demanded duty on the goods found short.

5. Heard the submissions of both sides and considered them. I find that for removal of the goods from I.G.I. Airport the appellant had filed a Warehousing Bond Bill of Entry. In that Bill of Entry, the order of the Asstt. Collector was to examine the goods with reference to invoice as to quantity. I also find that some packets were examined and they were found in order. At the time of this examination of the goods as to quantity the appellant was satisfied that there was no deficiency in the quantity of the goods. I also find that the Tribunal in its order in the case of Union Carbide India Ltd. v. Collector of Customs reported in 1985 (22) E.L.T. 104 had observed : "In respect of goods for which a bond has been executed under Section 59 and which were not found on verification in the

warehouse, we uphold the plea of the deptt. that the party had not accounted for the goods as provided in the Act. The plea that internal documentation of the company would show that they have in fact placed on board the trawlers and hence exported in terms of Section 69 of the Act is not supported by documents prescribed under Act. The demand in respect of these goods has been correctly made and confirmed by the Addl. Collector. That part of the order is thus upheld."

6. In the instant case, the goods were removed from the I.G.I. Airport after executing a bond under Section 59 of the Customs Act. Therefore proper accountal of the goods once they were examined before removal and found in accordance with the quantity shown in the invoice, then the duty liability squarely falls on the importer in terms of the bond executed under Section 59 of the Customs Act. In view of the above, the impugned order is upheld and the appeal is rejected.