Vijay Kumar Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-14-1995

Reported in : (1995)(78)ELT62TriDel

Appellant : Vijay Kumar

Respondent : Collector of Customs

Advocate for Pet/Ap. : Shri. Harbans Singh

Judgement :

1. These are two appeals filed by S/Shri Vijay Kumar and Sant Baba Jaswant Singh against the confiscation of a Truck with Registration No.ITRX 7281 and imposition of penalty of Rs. 50,000/- on the former. The second-mentioned appellant is the owner of the confiscated vehicle for which option to redeem was given on payment of fine in lieu of confiscation of Rs. 30,000/-.

2. Shri Harbans Singh, learned counsel for the appellants submitted during the hearing that Shri Vijay Kumar is the Booking Clerk of the Transport Company, which had accepted the goods in question and loaded them for transport to Ludhiana. He had requested for cross-examination of the panch witnesses and the concerned departmental officers. The appellant had cooperated with the department. He had shown the tempo which had brought the goods to them for being loaded in their truck. He did not know about the contraband nature of the goods in question.

Penalty had been imposed on him under Section 112 of Customs Act. He had not done anything or omitted to do anything which would attract the said provision. There is no finding in the order about his actual role in the matter, knowing the goods to be contraband and liable to confiscation.

3. As regards, Sant Baba Jaswant Singh, the learned counsel submitted that the confiscation of his truck was not called for as the goods had been accepted for carriage in the normal course of transport business.

The confiscation of the truck was not called for and imposition of fine in lieu of confiscation be set aside. He submitted a copy of order No.A1024-1025/93-NRB, dated 16-12-1993 passed by this Bench in a similar matter where the confiscating of a vehicle was set aside.

4. Shri K.N. Gupta, learned Senior Departmental Representative submitted in reply that Shri Vijay Kumar, Booking Clerk had knowledge of the nature of goods, as has been discussed in the impugned order.

The goods in question are notified goods and the conduct of Sarvashri Prem Chand and Haumant Singh who had respectively brought the goods to the transport company for loading and who was the owner of the goods in avoiding summons point to the contraband nature of the goods. The truck was liable for confiscation and Shri Vijay Kumar, the Booking Clerk who had accepted the goods for transport and arranged for its loading in the truck with the knowledge of the nature of goods was liable to penalty. He supported the order.

5. We have considered the submissions. We find that as far as Shri Vijay Kumar is concerned, the adjudicating authority had held in his impugned order that he had admitted in his statement that he had accepted the goods for transportation and that no bill/document was produced for the same. From the statement of the driver of the truck, it was clear that the goods were loaded in the truck, that Shri Vijay Kumar had knowledge of the contents of the packages and as such it was held that the involvement of Shri Vijay Kumar was proved beyond doubt.

6. We find that the above discussion in the impugned order does not bring out the involvement of Shri Vijay Kumar in regard to carrying, removing, depositing, harbouring, keeping, concealing or dealing with goods in any other matter knowing or having reason to believe that they are liable to confiscation under Section 111 of Customs Act. This is the requirement under Section 112(b) which could have been considered for the purpose of imposing penalty on him. No doubt he had reportedly told the driver, as had come out in the latter's statement, that the contents of the packages were yarn for manufacture of textiles. This by itself does not establish that he knew the contents to be smuggled yarn liable for confiscation. The charge has not been brought home against him. In the circumstances the imposition of penalty on the appellant is not justified. We, therefore, allow the appeal filed by Shri Vijay Kumar and set aside the order appealed against insofar as the imposition of penalty on him is concerned.

7. As regards the appeal of Sant Baba Jaswant Singh, the confiscation of the truck and the imposition of fine in lieu of confiscation have been challenged. It has been contended that the transport company or proprietor who were persons in charge of the truck had not been found to have contravened any provisions of Customs Act, there would be no case for confiscation of the truck under Section 115 of Customs Act, 1962. It has, therefore, been pleaded that the amount of Rs. 30,000/- deposited while obtaining provisional release of the truck be ordered to be refunded to him. We have taken note of the submissions in this regard. In the facts of the case, we are inclined to accept the plea raised that the owner of the truck, his agent or the person in charge of the same had no knowledge that the truck was used in the carriage of any smuggled goods. On similar facts, this Bench had allowed the appeal filed by Shri Pritpal Singh and Delite Carriers (Order No.A/1024-1025/93-NRB, dated 16-12-1993). A copy of the said order was submitted by the learned counsel. Following the same decision, we allow the appeal filed by the appellant, Sant Baba Jaswant Singh and set aside the order appealed against insofar as the confiscation of the truck and imposing fine in lieu of confiscation is concerned. The amount of security against which the same was released provisionally, against which the fine in lieu of confiscation has been adjusted would be liable to be returned to the appellant.