

Kwick Handling Service Pvt. Ltd., Presently Known as Sikkas Kwick Handling Service (P) Ltd. Rep. by Its Branch Manager, Mr. R. Ramachandran Vs. the Joint Secretary, Department of Revenue, Ministry of Finance, Government of India

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Court : Chennai

Decided On : Nov-14-2008

Reported in : 2009(234)ELT30(Mad)

Judge : A.K. Ganguly, C.J. and ;F.M. Ibrahim Kalifulla, J.

Acts : [Customs Act, 1962](#) - Sections 114; Customs House Agents Licensing Regulations, 2004

Appeal No. : Writ Appeal No. 1246 of 2008

Appellant : Kwick Handling Service Pvt. Ltd., Presently Known as Sikkas Kwick Handling Service (P) Ltd. Rep. by

Respondent : The Joint Secretary, Department of Revenue, Ministry of Finance, Government of India

Advocate for Def. : P. Chandrasekaran, SCGSC

Advocate for Pet/Ap. : M. Balagopal, Adv.

Disposition : Appeal dismissed

Judgement :

A.K. Ganguly, C.J.

1. This writ appeal has been filed by the writ petitioner M/s. Kwick Handling Service Pvt. Ltd. presently known as M/s. Sikkas Kwick Handling Service (P) Ltd. functioning as a licensed Custom House Agent (CHA).

2. The relevant facts of the case appear from the judgment of the writ Court. It appears that the CHA admitted two cardboard boxes containing the personal effects as unaccompanied baggage of one Ms. Birgitte Arnak Pedersen at Chennai Port for export to Denmark. The said passenger has a Danish Passport and the said consignment along with the Shipping Bill No. 0625691 dated 03.02.2004 were examined in the presence of one Mr. G. Ramasamy representing the CHA and during such examination it was found that there were six objects, namely three numbers of metal ornaments, two numbers of metal belts and one idol in a glass case, apart from the personal effects of the passenger. Since some of the objects looked very old they were sent for examination by the Department of Archeological Survey of India (ASI) to find out whether they are antiques or not. On examination the ASI opined that it is clear that the statue of Buddha was antique in nature and as per the Import and Export Policy of 2000-2001 export of any antique item is prohibited. The Commissioner of Museum, Egmore was thereafter requested to depute a person to value the antique. Accordingly, the Commissioner visited the warehouse of the Customs House and valued the antique to the tune of six lakhs in the international market.

3. The passenger wrote a letter dated 03.04.2004 wherein she requested for release of her personal goods which were detained apart from the antique and also stated that she visited India as tourist and purchased the articles on good faith from a roadside shop at Gaya. The manager of the CHA in his statement dated 23.09.2004 also stated that he did not know about the metal object concealed in the baggage of the passenger. Thereafter, a show cause notice dated 19.11.2004 was issued calling upon the passenger to show cause.

4. The CHA was also called upon to show cause, why penalty should not be imposed on it for having filed the shipping bill by misdeclaring the antique as Plastic Buddha idol in the shipping bill concealed among the personal effects and why penal action under Section 114 of the [Customs Act, 1962](#) should not be initiated against the CHA.

5. Thereafter, an order in Original Petition was passed by the Joint Commissioner of Customs (Adjudication Unit - Sea) over the aforesaid show cause proceedings, and in the said order, the relevant facts were noted. It was held that a personal hearing was given to one Mr. R. Ramachandran, Branch Manager and authorized signatory of CHA, who appeared for personal hearing on 30.12.2004 and submitted his written submissions. In the said written submissions, it was stated that the CHA was having lack of technical knowledge of antique and as such, there is no wilful misdeclaration or misstatement. On those facts, the finding by the Adjudicating Authority is that the passenger has stated in her reply that CHA was aware of the contents of the unaccompanied baggage. Therefore, the Adjudicating Authority found that before preparing the custom documents, the CHA should have ascertained the antique nature of Teracotta Buddha idol by referring the same to some experts of ASI. It was also held by the Adjudicating Authority, on facts, that all those six objects, which were suspected by the customs officers as antique, were not declared in the shipping bill, even though documentation for customer clearance was done by CHA. On those facts, the Adjudicating Authority held that the various decisions, which were cited by the CHA, are not applicable to the facts of the case and ultimately, the Joint Commissioner of Customs (Adjudication - Sea) imposed a fine of Rs. 3 lakhs on the CHA under Section 114(i) of the [Customs Act, 1962](#).

6. Against the said order of the Adjudicating Authority rendered in Original No. 3351/05 dated 08.02.2005, an appeal was preferred by the CHA. Before the Appellate Authority also personal hearing was granted to one P.K.S. Ramakrishnan, Consultant, K.L. Sikka, Managing Director and R. Ramachandran, Branch Manager of CHA. The Appellate Authority found that from the records that it is evident that the CHA inspected the goods before preparing the documents for export and proper packing. So, it cannot be denied that persons doing packing on behalf of CHA were not aware of the contents in the package and presented the goods to the customs as was given by the passenger. It was also found that this is not a case of normal trade export, but is an export against the unaccompanied baggage of a passenger, and entire documentation was made by the CHA and then signed by the passenger. Therefore, while preparing the documents, the appellant must have noticed the items and should have guided the passenger as well as the department. Instead of doing so, the appellant declared the Buddha idol as plastic goods and did not mention the other items, namely, metal bells and metal ornaments, in the export documents. The Appellate Authority also did not accept the contention of the appellant whereby the certification by ASI and its valuation was disputed, since such questions, which were factual in nature, were not raised before the Adjudicating Authority. The Appellate Authority refused to accept the contention of the appellant that they were totally ignorant about the nature of the case. However, considering the overall situation and circumstances of the case, the Appellate Authority substantially reduced the penalty from Rs. 3 lakhs to Rs. 25,000/-.

7. Against the said order of the Appellate Authority dated 16.05.2006, a revision was also filed. The Revisional Authority by his order dated 29.06.2006 also virtually affirmed the order. But the quantum of penalty was further reduced to Rs. 10,000/-.

8. The learned Judge of the writ court, against such consistent findings of fact, did not interfere with the order and found that the penalty, which has been imposed, is very reasonable. Sitting in appeal over the said

judgment of the learned Judge, this Court cannot take a different view from the one taken by the learned Judge, since the involvement of the CHA cannot be ruled out in the facts and circumstances of this case and especially when there is a concurrent findings against the appellant by all the fact finding authorities.

9. Learned Counsel for the appellant relied on the Customs House Agents Licensing Regulations, 2004 and submitted that under none of the Obligations cast under the said Regulations, the appellant is liable. We are of the view that under 13(d) of the said Regulation, the appellant is liable to advise his client properly to comply with the provisions of the Act and in case of non-compliance, bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs as the case may be. The relevant Clause 13(d) is set out below:

advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

10. In our considered view, the appellant has failed to discharge his duty in terms of Clause 13(d) of the Regulations. Learned Counsel for the appellant also relied on a judgment in the case of Commissioner of Customs, Tuticorin v. Moriks Shipping and Trading Pvt. Ltd. reported in . The said judgment was rendered on totally different facts, inasmuch as in that case the goods declared by the exporter in the relevant shipping bill was Organic dye intermediate G-salt, whereas on detail examination of the case by the officer of the customs followed by chemical examination of the case in the departmental laboratory, the goods were found to be common salt. In such a situation, it was difficult for the CHA to find out distinction between Organic dye intermediate G-salt and common salt. Whether the goods are Organic dye intermediate G-salt or common salt can only be ascertained on detail examination by the customs officer followed by chemical examination in the laboratory. But, in the instant case, whether it was a Buddha idol made of plastic or whether the Teracotta Buddha idol made of metal or stone has any antique value can be found on prima facie examination of the item itself. Therefore, the decision in the case of Commissioner of Customs, Tuticorin v. Moriks Shipping and Trading Pvt. Ltd. (supra) is quite distinguishable on facts and has no application to the facts of instant case.

11. For the reasons aforesaid, we, sitting in writ jurisdiction, cannot interfere with the concurrent findings of fact by the departmental authorities, and those findings, which are reasoned and based on relevant materials, cannot be called perverse either.

12. Therefore, the appeal fails and the order of the Revisional Authority is confirmed. No costs. Consequently, miscellaneous petition is closed.

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