Commissioner of Customs. Vs. Balakrishnan Devidayal M/S Kuppi Utapadan.

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Court : Gujarat

Decided On : Feb-03-2011

Judge : Harsha Devani; H.B.Antani, Jj.

Acts : Customs Act - Sections 130, 2(26)(33),111(d), 112(a); Foreign Trade (Regulation) Rules - Rule 14

Appeal No. : TAX APPEAL No. 199 of 2011

Appellant : Commissioner of Customs.

Respondent : Balakrishnan Devidayal M/S Kuppi Utapadan.

Advocate for Def. : MR NANDISH CHUDGAR, Adv.

Advocate for Pet/Ap. : MS AMEE YAJNIK, Adv.

Judgement :

1. In this appeal under section 130 of the Customs Act, 1962 (the Act), the Commissioner of Customs, Kandla has challenged common order dated 24^th March, 2006 made by the Customs, Excise and Service Tax Appellate Tribunal (the Tribunal) proposing the following questions:-

i. Whether the Advance Licence obtained under DEEC Scheme and against which fulfilment of Export obligation was on the basis of misstatements/misdeclaration by submitting forged/fake export documents before the DGFT is to be treated as a valid and legal document?

ii. Whether the import made on the authority of Advance licence obtained/transferred on the basis of forged/fake/manipulated export documents are lawful imports and exempted from payment of duty under Notification No.204/92-Cus dated 19.05.1992? iii. Whether the importer as defined in Section 2(26) of the Customs Act, 1962 includes the licence holder for the purpose of Notification 204/92-Cus dated 19.05.1992 being any person holding himself to be the importer and who had obtained the Advance licence for duty free import subject to fulfilment of export obligation but for transferring the licence to a third party. iv. The letter and spirit of the impugned order is contrary to the settled principles of law. The order would convey a meaning that a fraudster, after successfully perpetrating the fraud, sells the fruit of the fraud to a third party and this transfer nets him double enrichment that a pecuniary gain which also simultaneously washes away his crime. This raises a Question of law, whether a licence obtained by fraud is a non-est from the beginning or at least from the time the fraud is committed or its subsequent legal use, makes the licence clean despite the discovery of fraudulent elements subsequently?

v. Whether the confiscation of imported goods under section 111(d) of the Customs Act, 1962 imported duty free on the basis of licence obtained under DEEC Scheme and against which fulfilment of export obligation was shown fraudulently to the DGFT for obtaining endorsement of transferability of the licence is legal vis-a-vis the goods having become prohibited goods in terms of Section 2(33) of the Customs Act, 1962 read with Rule 14 of the Foreign Trade (Regulation) Rules, 1993.

vi. Whether the Tribunal is right in law in setting aside duty of Rs.19.27,404/- demanded under Section 28 of the Customs Act, 1962, interest of Rs.5,01,125/- charged at the rate of 24% in terms of para 128(A)(iii)(a) of the Export-Import Policy 1992-97 arising due to the omission and commission on the part of the licence holder for getting the advance licence transferred on the basis of forged/fake export documents, and penalty of Rs.25,00,000/- imposed under Section 112(a) on M/s. Rajnarayan Jwalaprasad as also penalties of Rs.25,00,000/- on Shri Sailesh Agarwal, Rs.5,00,000/- on Shri Prakash Agarwal, Rs.5,00,000/- on Shri Brijesh Agarwal, Rs.2,00,000/- on M/s. Kuppi Uttpadan, Rs.2,00,000/- on Shri Balkishan Devidayal and Rs.2,00,000/- on M/s. ACT Shipping Ltd., imposed under Section 112(a) of the Customs Act, 1962.

2. Heard the learned senior standing counsel for the appellant and Mr. Nandish Chudgar, learned advocate for the respondent.

3. As noted hereinabove, this appeal arises out of common order dated 24^th March, 2006 passed by the Customs, Excise and Service Tax Appellate Tribunal. Insofar as the present respondent is concerned, the adjudicating authority had only levied penalty under section 112(a) of the Act which has been set aside by the Tribunal.

4. Against the common order dated 24^th March, 2006 passed by the Tribunal, the appellant herein had preferred Tax Appeal No.1263 of 2006 in respect of M/s. Rajnarayan Jwalaprasad, one of co-notices. The said appeal has been decided vide judgment and order dated 27^th January, 2011 wherein the role of each of the notices including the respondent herein has been discussed in detail. In the circumstances, it is not necessary to set out the facts and contentions in detail.

5. For the reasons stated in order dated 27^th January, 2011 passed in Tax Appeal No.1263 of 2006 in the case of Commissioner of Customs vs. Rajnarayan Jwalaprasad, it is not possible to state that the Tribunal has committed any legal infirmity so as to give rise to a question of law. The appeal is accordingly dismissed.