

C.Ashok Kumar Vs. Commissioner of Customs (Export-seaport) Chennai

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Chennai

Decided On : Jan-29-2010

Judge : The Honourable Ms. Jyoti Balasundaram, Vice President

Appeal No. : Appeal No.C/330 of 2005

Appellant : C.Ashok Kumar

Respondent : Commissioner of Customs (Export-seaport) Chennai

Advocate for Pet/Ap. : Shri B.Satish Kumar, Advocate, Shri Krishnanandh, Advocate, Shri C.Dhanasekaran, SDR For the Appellant

Judgement :

The appellant herein, who is the authorized signatory of M/s.Sindhu Cargo Services Ltd., CHA, challenges the imposition of penalty of Rs.1 lakh upon him under the provisions of Section 114 (i) of the Customs Act, 1962 on the ground that he had not taken due care and precaution expected from a CHA and by his negligence, aided and abetted smuggling of red sanders logs in the guise of mica powder by M/s.S.K.Impex.

2. I have heard both sides. There is no evidence on record as to the knowledge on the part of the appellant of the substitution of red sanders logs for mica powder the Commissioner has accepted that the container containing consignment of mica powder was tampered and red sander wood logs was stuffed during transit. It is not the case of the department that the CHA was involved in the tampering.

Significantly, the CHA has not been penalized. Negligence cannot result in abetment so as to warrant penal action, in the light of Tribunal's decision in A.N.Bhat Vs Collector of Customs [1991 (55) ELT 580] and Neptune's Cargo Movers Pvt. Ltd. Vs Commissioner of Customs (Export), Chennai [2007(219) ELT 673].

3. Following the ratio of the above decisions, I set aside the penalty on the appellant and allow this appeal.

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