

C.C.E., Raipur (C.G.) Vs. M/S Ajay Kumar Bhasin

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-22-2010

Judge : The Honourable Mr. M. Veeraiyan, Member (Technical)

Appeal No. : Central Excise Appeal No.2981 of 2007-SM

Appellant : C.C.E., Raipur (C.G.)

Respondent : M/S Ajay Kumar Bhasin

Advocate for Pet/Ap. : Shri I. Baig, Authorised Departmental Representative (SDR) for the Revenue and none for the respondents

Judgement :

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No. 169/RPR-I/2007 dated 23.8.07.

2. Heard the learned SDR for the Department. None appears for the respondents in spite of notice. On earlier occasions also, none appeared for the respondents.

3. A show cause notice was issued proposing confiscation of the goods alleged to have been removed without payment of duty by M/s R.K. Structures (P) Ltd. and in the said show cause notice, proposal was made for confiscation of the truck used for transporting such non-duty paid goods and penalties were also proposed on

the owner of the truck as well as on the driver of the truck. The original authority confirmed the demand of duty and imposed penalty on the manufacturing company. He ordered confiscation of the truck but allowed the same to be redeemed on payment of fine of 25% of the value of the said truck. However, he refrained from imposing any penalty on the owner of the truck and on the driver holding that they were not actively involved. On appeal by the owner of the truck, the Commissioner (Appeals) has set aside the confiscation of the truck holding that there was no evidence on record to show active involvement of the owner of the truck in the clandestine activities of the manufacturing unit.

4. Learned SDR after reiterating the grounds of appeal also refers to the finding of the original authority that truck was used for transporting the goods clandestinely from the premises of the party and that the driver was not carrying the necessary documents supporting payment of duty.

5. I have carefully considered the submissions from the learned SDR. Any conveyance used for transporting clandestinely removed goods is liable for confiscation under Section 115 of the Customs Act as made applicable to Central Excise matters. Section 115(2) of the Customs Act reads as under:-

“SECTION 115. Confiscation of conveyances. - (1) -.

(2)? Any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal :

Provided that where any such conveyance is used for the carriage of goods or passengers for hire, the owner of any conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine not exceeding the market price of the goods which are sought to be smuggled or the smuggled goods, as the case may be”.

The confiscation of the conveyance can be done when the ingredients of Section 115(2) are evident. In the present case, though the show cause notice was issued for imposition of penalties on the driver and the owner of the truck, the original authority dropped the proceedings against them. This finding obviously leads to an inference that there is no knowledge or intention attributable on the part of the owner of the truck and the driver, his agent, in the clandestine removal of the goods. It has not been shown that the Department has filed any appeal against the order of the original authority in not imposing any penalty on the owner and the driver of the truck. The grounds of appeal also nowhere disclose any material attributing knowledge or intention on the part of the driver or owner of the vehicle. Under these circumstances, the order of the Commissioner (Appeals) in setting aside the confiscation of the truck calls for no interference.

6. The above observations may not be treated as finding against the manufacturing unit as their appeal, if any, is not before me.

7. In view of the above, the appeal by the Department is rejected.

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