(2010) 05 P&H CK 0203

In the Punjab And Haryana At Chandigarh

Commissioner of Central Excise APPELLANT

Vs

Deepak Roadways RESPONDENT

Date of Decision : 03-05-2010

Acts Referred:

Citation : (2010) 176 ECR 196 : (2010) 254 ELT 26 : (2010) 27 STT 201

Hon'ble Judges : Mehinder Singh Sullar, J;Ashutosh Mohunta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ashutosh Mohunta, J.—This judgment shall dispose of CEA No. 50 of 2006 and CEA No. 77 of 2006, as common questions of law and facts arise in both these appeals.

2. The Revenue has impugned the order dated 16.7.2004, passed by the Customs, Excise & Service Tax Tribunal (New Delhi) (for short ''the Tribunal''), vide which a penalty of Rs. 50,000/- imposed upon each of the respondent was ordered to be set aside.

3. Briefly, the facts of the case are that the premises of M/s Shobit Impex situated at Abohar as well as their godown and factory premises of M/s Gandhi Chem-Fert Industries, Abohar were checked on 22.7.1998. During the search, the factory premises of Gandhi Chem-Fert Industries at Abohar, sale invoices, copies of bills of entry and copies of Good Receipts (for short ''G.R.s'') and other miscellaneous correspondence files pertaining to M/s Shobit Impex were recovered and resumed under proper Panchnama dated 23.7.1998. During further search, it was found that dimensions of the godown premises of M/s Shobit Impex were only 12 x 18 feet. Hence, the godown was incapable to store huge consignments of copper rod and scrap. On further enquiry, it transpired that the room was never used for storage of goods and no one had seen any kind of activity regarding transportation of the imported goods. Finding the aforementioned irregularities, the adjudicating authority issued notices not only

to M/s Shobhit Impex, but to various other buyers to whom the fake modvat invoices had been sent. Notices were also issued to the respondent-transporters, who are alleged to be transporters of the imported consignments, as it was prima facie found that the respondent-transporter had facilitated the issuance of blank G.R.s in favour of various buyers, to whom the show cause notice had also been given.

4. After hearing the respective parties, the adjudicating authority found that the goods imported had actually not been transported by the respondent-transporters and they had issued fake G.R.s making them liable for penal action under Rule 209-A of the Central Excise Rules, 1944 (for short ''the Rules'').

5. The adjudicating authority imposed a penalty of Rs. 50,000/- each on the transporters for abetting the fraud. An appeal was filed by the respondent before the Tribunal, who accepted the appeal filed by the respondent and held that penalty cannot be imposed on M/s Milap Transport Carriers and M/s Deepak Roadways under Rule 209-A of the Rules as none of the ingredients mentioned in Rule 209-A are applicable. It was held that the transporters had actually not transported the goods. It was further held that the transporters had neither acquired possession of the excisable goods nor dealt with the excisable goods in any manner with the knowledge that the goods are liable for confiscation under the Central Excise Act.

6. Mr. Gurpreet Singh, counsel for the Revenue as drawn our attention to Rule 209-A which is reproduced as under:

Rule 209A. Penalty for certain offences.- Any person, who acquires possession of, or is any way concerned in transporting, removing, depositing, keeping, concealing, selling, or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding three times the value of such goods or five thousand rupees, whichever is greater.

7. It is contended that a perusal of the aforementioned Rule makes it clear that for invoking the provisions of said Rule it is not mandatory to have actual possession of the goods or actually deal with the goods. Learned Counsel submits that by supplying blank books of G.R.s to M/s Shobhit Impex, both the transporters had indirectly helped the said dealer to raise the bogus/fake modvat credit under the Central Excise Rules in respect of said goods which were never received by the said dealers in his godown at the first instance and as such helped the procurer of the invoices to avail modvat credit fraudulently. Learned Counsel further submits that the Tribunal has failed to notice the criminal intentions of the transporters as they had handed over the blank books of the G.R.s without actually providing any transport for carrying the goods. Learned Counsel submits that as per Rule 209-A of the Rules, any person who is concerned in transport or deals with any of the excisable goods in any manner

and knows that he has reason to believe that the goods are liable for confiscation would fall under Rule 209-A of the Rules. Learned Counsel submits that the respondent-transporters very well knew that the G.R.s issued by them are fake, as no goods had been transported by them and therefore, they had facilitated the fraud being committed by M/s Shobhit Impex and various other buyers.

8. No one has put in appearance on behalf of the respondent.

9. On the basis of the aforementioned facts, the following law point arises for consideration in this appeal:

Whether the Hon''ble Tribunal is correct in holding that no contravention of the provisions of Rule 209A of the erstwhile Central Excise Rules, 1944 has been made by a Transporter Company by way of supplying the Blank G.R.''s to a Dealer, which has facilitated the said dealer to issue fake/bogus Modvatable Documents in contravention of Rule 57G ad 57GG of the said rules.

10. A perusal of the aforementioned facts clearly shows that M/s Milap Transport Carriers and M/s Deepak Roadways had helped the dealers to raise bogus/fake modvatable documents under the Central Excise law in order to fraudulently help the buyers to avail modvat credit. They had not transported the goods, but yet, had issued blank books of G.R.s and had thus, abetted in passing of the fake/ bogus modvatable documents to various manufacturers resulting into loss of duty amounting to Rs. 62.90 lacs to the Government.

11. We are also of the considered opinion that the findings of the Tribunal that Rule 209-A would not be attracted in the facts and circumstances of the present case, is wholly erroneous, as it is clear from the language of Rule 209-A that whoever deals in any manner with the goods which he has reason to believe that the goods are liable for confiscation and whoever transports such goods, shall be liable to penalty not exceeding three times of the value of said goods or Rs. 5000/- whichever is higher.

12. In view of the above, the question of law as posed in this appeal is answered in favour of the Revenue and against the respondent.

13. Resultantly, we allow the appeals, set aside the order dated 16.7.2004, passed by the Tribunal and restore the order dated 21.11.2002, passed by the Commissioner, qua the respondents in CEA No. 50 of 2006 and CEA No. 77 of 2006.

