**(2006) 12 P&H CK 0034**

**In the Punjab And Haryana At Chandigarh**

Commissioner of Customs APPELLANT

Vs

Kamal Kapoor RESPONDENT

**Date of Decision :** 07-12-2006

**Acts Referred:**
Customs Act, 1962 — Section 111, 112, 125, 130A

**Citation :** (2007) 5 STR 251

**Hon'ble Judges :** Rajesh Bindal, J;Adarsh Kumar Goel, J

**Bench :** Division Bench

**Final Decision :** Dismissed

## Judgement

1. This petition has been filed u/s 130(A) of the Cus-toms Act, 1962 seeking a direction to refer following question of law for adjudication of this Court arising out of Order Nos. 474-484/2001-NB(DB) passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi dated 1-6-2001:

Is redemption fine in lieu of confiscation of goods or is it necessary that knowledge of the custodian of the goods that the goods are in violation of import of law is pre-requisite for imposition of Redemption fine?

2. A show cause notice was issued requiring the respondents to show cause why action be not taken against them for purchasing and dealing in any manner with the goods which is liable to penal action u/s 111 of the Act.

3. After considering the stand of the respondents, the Adjudicating Officer passed the following order:

I order confiscation of the machines appearing at Sr. Nos. 7, 8, 16, 28 and 29 of annexure to the show cause notice seized from the factory premises of the following parties under Sections 111(d) and 111(o) of the Customs Act, 1962. However, in exercise of the powers conferred on me u/s 125 of the Customs Act, 1962, I give them an option to redeem the same on payment of fine in lieu of confiscation as shown against each:

 

------------------------------------------------------------------- S. Name of S. No. of Seized from Value (in Rs. ) Fine in lieu No. Importer Machine of confisca- Tion ------------------------------------------------------------------- 1. M/s. Venus 10724 Khatta of 2,25,000/- 75,000/- Industries Kuldip Singh -do- 13308 2,25,000/- 75,000/- 2. -do- 31906 Deepak 2,50,000/- 80,000/- Knitters 3. M/s. Shree 45416 Beauty Knit- 6,50,000/- 2,50,000/- Ambaji Textiles tings (P) Ltd. 4. --do-- 37560 --do-- 6,50,000/- 2,50,000/- -------------------------------------------------------------------

The following machines appearing at Sr. Nos. 1, 6, 17 and 18 of annexure of show cause notice are liable to confiscation under Sections 111(d) and 111(o) of the Customs Act, 1962. However, these are not available for confiscation, having been ordered to be released provisionally to the respective persons on execution of a Bond and furnishing of Bank Guarantee. Accordingly I order their confiscation and given the parties option to redeem the machines on payment of fine in lieu of confiscation as indicated below. Further I order that amount of Bank Guarantee be appropriated against fine in lieu of confiscation in terms of the provisions of Bonds:

------------------------------------------------------------------- 1. M/s. Venus 23432 Akal Knitters 6,50,000/- 2,50,000/- Industries 2. -do- 24288 Narain Knittings 6,50,000/- 2,50,000/- 3. -do- 41994 Rohit Knittings 2,50,000/- 80,000/- 4. --do-- 20064 Arora Knittings 2,50,000/- 80,000/- -------------------------------------------------------------------

The seizures of seventeen knitting machines valued at Rs. 55,50,000/- seized from the premises of M/s. Kiwi Knitters, M/s. S.P. Shawls, M/s. New Quality, Khatta of Kuldip Suri, Khatta taken on rent by Venus Industries, M/s. Nemo Fabrics, M/s. Ruby Knitters and Khatta of Smt. Parvati Devi (mentioned at Sr. Nos. 2, 3, 4, 5, 9, 10,11,12,13,14,15,19, 20, 21, 22, 30 and 31 of the annexure to the show cause notice) are ordered to be vacated.

I impose a personal penalty of Rs. 15,00,000/- (Rs. Fifteen Lakh only) on Sh. Kamal Kapoor and Rs. 5,00,000/- (Rs. Five Lakh only) on Sh. Krishan Kapoor under Sections 112(a) and 112(b) of the Customs Act, 1962.

Impose a personal penalty of Rs. 1,50,000/- (Rs. One lakh and fifty thousand only) on Sh. Kuldip Singh u/s 112(b) of the Customs Act, 1962.

The penal proceedings against S/Shri Vinod Kumar, Sarabjit Singh, Dharam Singh, Rachhpal Singh, Ajay Behl, Romt Kumar, Deepak Kumar, Nitin Arora, Darshan Lal, Smt. Shashi Kapoor, M/s. B.K. Textiles and M/s. Sharma and Arora Knitters are dropped.

4. In appeal filed by the respondents, the Customs Excise and Gold (Control) Appellate Tribunal modified the order of the Adjudicating Officer to the following effect:

In the light of the discussion made above, the impugned order of the

 

Commissioner is modified against appellants No. (1) & (2) by reducing the penalty on them to Rs. 1.5 lakhs (Rupees one lakh and fifty thousand only) and Rs. 50,000/- (Rs. Fifty thousand) respectively and the appeals of these appellants stand partly accepted, while the impugned order against appellants (3) to (9) is set aside and their appeals bearing No. C/174, 172, 180, 175, 179, 173 and 171/2000-NB(D), stand allowed with consequential relief, if any, permissible under the law. However, appeals of the appellants Nos. (10) and (11) bearing Nos. C/170 and 176/2000-NB(D) are ordered to be dismissed.

5. A perusal of impugned order shows that allegation against the respondents in petition is that having imported second hand machinery in the name of their firms, in terms of para 5.4 of the Exim Policy 1997- 2002, permitting import of machines only for their own use, disposal thereof without prior permission of the DGFT, is in violation of the terms of import. The Tribunal found the quantum of penalty as regards respondents No. 1 and 2 to be excessive and accordingly, reduced the same. As regards, respondents No. 3 to 9, herein, who were appellant No. 3 to 9 before the Tribunal, it was held that they were bonafide purchasers of the machines without knowing ineligibility of the seller and in absence of any mens rea no penalty qua them.

6. Order of penalty qua M/s. Ambaji textiles and M/s. Venus Industries has been upheld by the Tribunal.

7. No question arises qua respondents No. 1 and 2, against whom, penalty has only been reduced in the discretion of the Tribunal.

8. As regards, respondents No. 3 and 9, it has been found that they were bona fide purchasers without any knowledge of ineligibility of the sellers. Having regard to the statutory provisions, providing, for redemption fine or confiscation of goods, it is patent that such an action is permissible where a person, against whom action is taken, has a mens rea. Learned Counsel for the petitioner has not been able to show how in law redemption fine or confiscation could be automatic, irrespective of mens rea.

9. On the other hand, there are judgments in Collector of Customs, Bombay v. Sneha Sales Corporation 2000 (121) E.L.T. 577 (S.C.) and Union of India and another Vs. Sampat Raj Dugar and another, , wherein the view taken in East India Commercial Co. Ltd.,Calcutta and Another Vs. The Collector of Customs, Calcutta, was followed and which view was also followed by the Bombay High Court in Taparia Overseas (P) Ltd. and Another Vs. Union of India (UOI) and Others, , K Uttamlal (Exports) Pvt. Ltd. Vs. Union of India, and Allahabad High Court in Coolade Beverages Ltd. Vs. Commissioner of Central Excise, and H. Guru Investment (North India) Pvt. Ltd. Vs. CEGAT, , holding that the purchaser of imported goods, having no knowledge of any violation, could not be subjected to penalty.

10. In view of the above, we do not find that any question of law arises, which may be required to be adjudicated upon by this Court.

 

11. Dismissed.

 