
(2006) 03 CAL CK 0066
In the Calcutta High Court
Case No : CUSTA No. 4 of 2002

Commissioner of Customs (Prev.)

APPELLANT

Vs

Rajesh Polyfilm

RESPONDENT

Date of Decision : 07-03-2006

Acts Referred:

Customs Act, 1962 — Section 130A, 139

Citation : (2006) 202 ELT 416

Hon'ble Judges : Pravendu Narayan Sinha, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : D.P. Mukherjee and I.P. Mukherjee, for the Appellant; K.C. Garg and Sunita Agarwal, for the Respondent

Judgement

Bhaskar Bhattacharya, J.—By this application u/s 130A of the Customs Act, 1962 (hereinafter referred to as the Act), the Commissioner of Customs (Preventive), West Bengal has challenged the order dated 11th July, 2001 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, Eastern Bench, Kolkata thereby dismissing four appeals preferred by the Commissioner of Customs which were heard analogously.

2. The facts giving rise to filing of the present appeal may be summed up thus:

(a) On 23rd April, 1995 a vehicle was intercepted by the Customs Officers and it was found that 80 bags of plastic granules of Korean origin contained therein. As a follow up action, the business premises of M/s. Rajesh Polyfilm were searched and 360 bags of plastic graules of foreign origin were sized.

(b) During the course of investigation, Sri Rajesh Agarwal, one of the partners of M/s. Rajesh Polyfilm submitted that they had purchased the said imported raw material from M/s. Kaiser Marbles and he also produced document relating to the purchase of those materials in the month of December, 1994.

(c) Based upon the above information, further enquiries were made from M/s. Kaiser Marbles who in their statement dated 27th April, 1995 admitted having

sold the material to the appellants and also disclosed that those materials were purchased by them from M/s. Kamal and Co., Guwahati who had imported the consignment under a bill of entry dated 6th July, 1994. They produced the copies of invoice, packing list, bill of lading number and bill of entry, etc. It was also disclosed that the goods were imported under different advance licenses on transferability.

(d) The Offices of the Customs made further investigation and found that the goods in question were shipped on 20th May, 1994 and were cleared from the Customs on 6th July, 1994. Based upon the information given in the document produced M/s. Kaiser Marbles, enquiries were made from Korea to ascertain the date of manufacture of the lot numbers found in the original package of the goods under seizure. Such enquiries from Korea purportedly revealed by a fax message dated 24th May, 1995 that the said lot numbers were manufactured by Korea Petro Chemical Industrial Company, Korea on 31st August, 1994 and 1st September, 1994 respectively. On the basis of above information further enquiries were made M/s. Ka-mal and Co. and M/s. Kaiser Marbles who clarified enclosing a copy of fax message dated 26th June, 1995 of their supplies M/s. Conccntra, Hongkong confirming that the said lot numbers did not pertain to the invoice dated 21st May, 1994.

(e) On the basis of the above enquiry, the Revenue entertained a view that the goods in question were not the same that had been imported by M/s. Kamal and Co. and accordingly, a show cause notice was issued on 20th October, 1995 for confiscation of those goods and for imposition of personal penalty.

(f) Those two show cause notices were adjudicated by the Additional Commissioner of Customs vide his order dated 20th March, 1997 confiscating absolutely the goods under seizure imposing personal penalty of Rs. 1,00,000/-, Rs. 75,000/-, Rs. 56,000/- and Rs. 50,000/-respective on M/s. Rajesh Polyfilm, Sri Rajendra Agarwal, Sri Ra-jesh Agarwal and Smt. Sukuntala Agarwal respectively.

(g) On appeal against the above order, the Commissioner of Customs set aside the order impugned.

3. Being dissatisfied, the Commissioner of Customs preferred an appeal before the Tribunal and as indicated above, the Tribunal by the order impugned herein had dismissed the appeal by affirming the order of Commissioner (Appeals).

4. Being dissatisfied, the Commissioner of Customs has come up with the present application u/s 130A of the Act.

5. Mr Mukherjee, the learned senior counsel appearing on behalf of the appellant has assailed the order passed by the Tribunal on the ground that the Tribunal erred in law in holding that the fax message on the basis of which the Revenue has formed the opinion that those were improperly imported could not be relied upon. By relying upon the provisions of Section 139(ii) of the Customs Act. Mr.

Mukherjee contends that the Customs Authority is entitled to rely upon such fax message.

6. After going through the order impugned as also the materials on record it appears that in the said fax message there is no customs reference on the basis of which the above response had been received. Moreover, the fax had not been received from the Petro Chemical Industrial Company, Korea, the manufacturer but the sender of the fax was stated to be one C.W. Lee. It is rightly pointed out by the Tribunal that identity of C.W. Lee is neither indicated nor did the signature appear on the fax. The name of the organization represented by C.W. Lee is also not indicated. The Tribunal has further recorded that the Customs vide letter dated 25th May, 1995 had addressed the fax to the Sales Manager, the Petro Chemical Industrial Company, South Korea with a request to oblige by return fax the date of manufacture of lot numbers II 55735 and J 55736 of polypropylene 1008813 grade. This fax message has been followed up by fax reminder dated 31st May, 1995 by drawing attention of M. Goh, Sales Manager of Petro Chemical Industrial Co. Ltd., South Korea. The Tribunal has further recorded that there is no response with regard to those two messages dated 25th May, 1995 and 31st May, 1995. It is, therefore, apparent that seizure of the impugned goods on the basis of information received by fax message dated 24th May, 1995 was not warranted.

7. The Tribunal has further recorded that on perusal of fax message received by M/s. Kamal and Co. from Concentra, Hongkong dated 26th June, 1995, it is clear that the goods shipped under invoice dated 21st May, 1994 vide bill of lading did not mention the lot numbers II 55735 and J 55736. Therefore, it is apparent that the said fax has not confirmed that lot in question was part of invoice dated 21st May, 1995 as made out in the show cause notice.

8. On consideration of the entire materials on record, we, therefore, agree with the Tribunal that the Revenue had failed to made out a case of confiscation of goods and imposition of penalty in the present case. The aforesaid finding recorded by the Tribunal is quite reasonable. It further appears that the respondent purchased the property from M/s. Kaiser Marbles who in turn proved that they purchased the same from M/s. Kamal and Co. and thus, the burden of legal importation of the goods in question has been discharged by the respondents although the appellant even could not discharge its initial burden and there was no valid material to form a bona fide belief that the goods in question were smuggled goods justifying initiation of action under the provisions of the Act and we do not find existence of any substantial question of law to interfere with the finding of the fact recorded by the Tribunal which is quite in conformity with the materials on record.

9. In the case of Collector of Customs, Bombay Vs. East Punjab Traders and Others, , relied upon by Mr. Mukherjee, some documents were obtained by the Indian Customs Officers during their visit to Japan for enquiry and photocopies of those documents did not bear any signature. In such a situation, the Supreme

Court held that when the authenticity of photocopies of the documents itself is suspected, the presumption u/s 139(ii) of the Customs Act, 1962 was not available, specially, when the documents had not come from the proper custody or obtained by the Indian Customs from the Japanese counter part.

10. We fail to appreciate how the said decision can be of any help to the learned advocate for the appellant. The said decision rather supports the respondents and in our view, the Tribunal rightly refused to rely upon the fax copy of the document relied upon by the Revenue in the facts of the present case. We, therefore, find that the said decision is of no help to the learned advocate for the appellant.

11. The reference is, thus, devoid of any substance and the same is dismissed accordingly. In the facts and circumstances, there will be, however, no order as to costs.

Pravendu Narayan Sinha, J.

12. I agree.