(2006) 10 DEL CK 0225

In the Delhi High Court

Case No : Customs Act Case No. 03 of 2006

Gaurav Exim Pvt. Ltd. APPELLANT

Vs

Commissioner of Customs and Others RESPONDENT

Date of Decision : 17-10-2006

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

Citation : (2006) 92 DRJ 763 : (2006) 113 ECC 54 : (2006) 139 ECR 54

Hon'ble Judges : Vipin Sanghi, J;Madan B. Lokur, J

Bench : Division Bench

Advocate : Chandrashekhar and Manish Pushkarna, for the Appellant; Biswajit Bhattacharya and A. Vohra Bandhu, for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—This is an appeal u/s 130 of the Customs Act, 1962 (for short `the Act'') directed against the final order bearing No. 818-829/05-Cus., dated 9-13th May, 2005 passed by the Customs Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as `the Tribunal'') in Appeal Nos. C/388/03, C/387, C/389 to 397/03 and C/549/03 directed against the order in Original bearing No. AKR/CC/ICD/TKD/31 & 32/03 dated 30th June, 2003 passed by the Commissioner of Customs, ICD, Tuglakhabad, New Delhi.

2. By the impugned order the Tribunal has dismissed the first appeal filed by amongst others, the appellant against the order in Original dated 30th June, 2003.

3. The facts in brief are that one M/s. Suren International Limited was found to be illegally importing tin, nickel and zinc by concealing these metals in consignments declared as of aluminium scrap. Excess quantities of aluminium scrap and import of copper scrap in place of aluminium scrap was also there. In respect of 17 container loads, M/s Suren International Limited had filed Bills of Entry. Part of the goods i.e. 23 container load consigned to Suren International

Limited had reached ICD, Tuglakhabad and these goods were seized by the Customs Authorities before any bill of entry were filed. The remaining goods were seized from two trucks packed in the Sundervan area and also from a godown at Ganga Nursery in Vasant Kunj, New Delhi. The appellant before us claims to be the owner of these goods found in the two trucks and at the said Ganga Nursery claims that these goods had been purchased from two Delhi parties.

4. The Customs authorities carried out search operations and investigations at many places including the house of one Mrs. Renu Mahant, Director of M/s. Suren International and her husband Mr. Harish Kumar and the godown of Suren International Limited in Sundervan area of Vasant Kunj. During the search it transpired that certain goods had been removed from the godown, a few hours before its search on 7th August, 2001. The neighborhood forest area was combed by the officers and they located two trucks loaded with metals in slab form. The drivers stated that the goods had been loaded from the godown of M/s. Suren International Ltd. Verification of the goods showed that over 21MT of zinc slabs of Chinese origin were loaded on the trucks. Thereupon these goods and the trucks were seized by the authorities. Subsequent search of the godown of Sh. Gajender Singh at Ganga Nursery in Vasant Kunj led to the seizure of 132 Mts of tin ingots and over 36 Mts of nickel on 10th August, 2001. Business records and files of Suren International Limited and the appellant herein and other business entities were also seized from the farm house of one Mr. Hans Nagar at Vasant Kunj.

5. In response to the notices issued by the authorities the appellant herein claimed that the goods seized from the two trucks belonged to it and that it had purchased these goods from two Delhi parties, who in turn claimed to have procured these goods from Bombay parties. The value of the goods seized from the trucks was about 5.5 crores.

6. It was claimed by the appellant that they had procured the said goods from M/s Ashok Kumar & Co. Ltd, D-267, Gali No. 10, Laxmi Nagar, Delhi and M/s Amrit Industries, 3992, Ajmeri Gate, New Delhi. The authorities made detailed enquiries which revealed that M/s. Ashok Kumar and Co. did not exist at the address as mentioned in the sales invoice submitted by the appellant in certain writ proceedings initiated by them. M/s. Ashok Kumar & Co had surrendered their registration with the sales tax in the year 1999 while M/s Amrit Industries had surrendered their registration with the sales tax in December, 1999. The Sales Tax Department had further informed that the transactions of M/s. Amrit Industries were found to be bogus.

7. The extent and nature of investigation carried out and information and evidence gathered by the authorities in this case is substantial. A perusal of the order in original shows that a great deal of effort has been put into the investigation of this case. We may particularly refer to paragraphs 115 (at internal page 45 of the order in Original) to paragraph 124 and again to

paragraphs 174 (at page 117 of the order in Original) to paragraph 183. It is evident that the claim of the appellant to have legally procured the said goods was found to be absolutely false. The so-called suppliers were found to be defunct entities and in fact the monies claimed to have been paid for procuring the said goods had come back into the coffers of the appellants through a hawala channel. The Commissioner of Customs came to the finding that the metals valued at Rs. 5.5 crores found in the two trucks and at Ganga Nursery godown were also a part of the illegally imported goods by Suren International Limited and were not legally procured goods as claimed by the appellant. The Commissioner of Customs, Therefore, proceeded to confiscate the goods and the trucks and allowed redemption thereof on payment of fine of Rs. 2.5 crores for the metal and Rs. 5 lakhs for each of the two trucks. He also imposed a penalty of Rs. 5 lakhs u/s 112(b) of the Customs Act upon the appellant.

8. The Appellant preferred a statutory Appeal before the Tribunal, which has been dismissed by the order dated 9-13th May, 2006 impugned herein. The Tribunal, discussed the claim of the Appellant in Paras 8 and 9 as follows:

In respect of the goods seized from the two trucks and Ganga Nursery godown the claim all through was that they belonged to M/s Gaurav Exim Pvt. Ltd., and that they had been purchased from M/s. Ashok & Co and M/s Amrit Industries, both of Delhi, though, significantly, no such claim was put forth at the time of seizure, and the goods were not stated to be so by the Truck drivers, transport operators or godown keeper. This claim is being canvassed in the present appeals also. The investigation, however, found that M/s. Gaurav Exim Pvt. Ltd., also belonged to the M/s Suren International Limited family, and one of its Directors was Ms. Sonali Mahant, daughter of Mrs. Renu Mahant & Sh. Harish Kumar and that the whole claim of purchase of the materials was false and put up. The investigation had found that the purported selling Delhi firms were defunct, they did not exist at the addresses and their sales tax registration had been surrendered or revoked years before the purported sales to M/s Gaurav Exim, that the purported Bombay suppliers of the two selling firms had only provided invoices without supplying goods, banking records had shown that the amounts purported to have been paid for the said supplies were all withdrawn as cash and returned through hawala and suppliers had admitted that the transactions were all false, and that upon receipt of payments by cheque, the cheques were encased and money returned and there was no supply of goods. There was also no transport of goods. It is in the light of such evidence that the Commissioner concluded that all the seized goods were illegally imported and belonged to the family businesses controlled by Sh. Harish Kumar. The detailed finding of the Commissioner on this issue is to be found in paras 173 (ii) to 183 of the impugned order.

The contention before us is that the surrendering/revocation of sales tax registration by M/s Gaurav Exim''s suppliers is no ground to reject their sales to M/s Gaurav Exim, in as much as, even transactions in violation of Sales Tax Laws remain valid. We find no merit in this submission. The evidence on record clearly brings out that these goods were not procured in India as claimed by M/s Gaurav Exim. The recovery and seizure of the goods was pursuant to information about storage of these goods by M/s Suren International Limited, the drivers of the trucks and the persons at Ganga Nursery had all stated that the goods were received from M/s Suren International Limited, these goods are also similar goods as sought to be smuggled in the containers imported by M/s Suren International Limited, each aspect of M/s Gaurav Exim''s claimed transaction with the two alleged suppliers of Delhi and their purchase from Bombay remains exposed as false. In these facts and circumstances, the Commissioner''s finding that these goods were also illegally imported is fully justified.

9. The Tribunal concluded that the order of confiscation and imposition of penalty passed against, inter alia, the Appellant were fully justified.

10. Before us, the learned Counsel for the Appellant has laid much emphasis on two challans dated 18th and 19th October, 2001, filed by M/s Amrit Industries and M/s Ashok Kumar & Co respectively under the Delhi Sales Tax Rules, 1975, to claim that on the sales claimed to have been made to the Appellant herein, the said entities had even paid sales tax. We are not impressed by this argument. Admittedly the said challans were filed much after the raid and seizure on 7th August, 2001 and soon thereafter. The same is Therefore of no avail. It is clear that the attempt of the Appellant is to somehow establish the so called purchases from the said two Delhi parties by rushing to deposit Sales Tax after the seizure of the goods. The said deposits of sales tax do not inspire any confidence in us. Moreover, there is enormous amount of evidence available on record, as found by both the Commissioner of Customs and the Tribunal which clearly shows that the so-called purchase was not genuine, that the two Delhi parties were defunct and that the monies allegedly paid to the Bombay parties had come back through a hawala channel. The nexus of the Appellant with M/s Suren International is also clearly established.

11. Coming now to the questions raised in the appeal we think it proper to set out the same herein below:

A) Whether, in respect of goods procured from the local market (there is no allegation in the Show Cause Notice as to when the goods were imported, or by whom), the provisions of Section 111(d) of the Customs Act, 1962, would be applicable.

B) Whether, even if it were to be assumed that these goods had been imported at some point of time by some importer (it is not the case in the Show Cause Notice that the petitioner imported these goods contrary to law), since these goods are not notified u/s of the Act, the onus of proving that they are "Smuggled" goods is not on the department, which onus has not been discharged by the respondent in the present case. The Hon''ble Tribunal has applied the law wrongly in the present case .

C) Whether the impugned order is not contrary to the Circular No. F. No. 04/149/65-Cus-III dated 14th December, 1965 in which it has, inter alia, been stated that "when the goods are recovered from a person who is not proved to be the importer of goods and claims to be a purchaser of the imported articles, onus is always on the customs authorities to establish that the goods were imported contrary to any import prohibition or restriction and they have to bring home the guilt to the person alleged to have committed a particular offence by adducing satisfactory evidence." It held by a Constitution Bench of the Hon''ble Supreme Court in Collector of Central Excise, Vadodra Vs. Dhiren Chemical Industries, , interpretation of the law contained in Circular issued by the Central Board of Excise & Customs [hereinafter referred to as "the Board"] are binding on the Revenue.

D) Whether the Hon''ble Tribunal is right in passing the impugned order, without assigning any independent reasons for upholding the order of the lower adjudicating authority.

E) Whether the Hon''ble Tribunal''s order is not perverse in as much there is no appreciation of the evidence available before it, and merely states that the order of the learned Collector of Customs is correct.

12. This Court can entertain an Appeal u/s 130 of the Act only when a substantial question of law is raised. All the questions as raised seek to essentially challenge the concurrent findings of fact.

13. We have carefully gone through the records of the case and find that the findings of fact have been arrived at by the Commissioner of Customs and the Tribunal after appreciation of the evidence and the conclusions drawn by them are also reasonable. Learned Counsel for the Appellant has not been able to point out any perversity in the order under challenge, which according to us is well reasoned and correct. We do not agree with the contention of the Appellant that in this case the Customs Authorities have not been able to establish that the goods in question are smuggled goods i.e imported illegally. We find that no substantial question has been raised and none arises in this case.

14. Accordingly we dismiss this appeal.

