(2023) 08 CESTAT CK 0041

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No.76479 Of 2016

Ishwar Chand Gupta APPELLANT

Vs

Commissioner Of Customs, Patna RESPONDENT

Date of Decision : 24-08-2023

Acts Referred:
Customs Act,1962 — Section 114, 115

Citation : (2023) 08 CESTAT CK 0041

Hon'ble Judges : R. Muralidhar, Member (J);Rajeev Tandon, Member (T)

Bench : Division Bench

Advocate : S. Debnat

Final Decision : Disposed Of

Judgement

R. Muralidhar, Member (J)

1. Shri Ishwar Chand Gupta was the proprietor of M/s Himalyan Roadways India located at New Delhi. Truck No. NA 3KHA 6351 belonging to Himalayan Roadways was intercepted by Nepali Customs authorities. It was detected that 797.5 Kg of prohibited Red sanders wood was being transported in a concealed manner. After due process, the Adjudicating Authority vide Order No. 27-Cus/ADC/Rxl/2012 dated 30/03/2012 held that truck carrying the goods were liable for confiscation under Section 115 of the Customs Act, 1962. He also imposed penalty on the Appellant. Being aggrieved, the Appellant preferred and Appeal before the Commissioner (Appeals) who vide his OIA No. 89-94/Pat/Cus/Appeal/2013 dated 22/02/2013 held as under:-

(9). The contention of the Appellant No. 1 & 5 who happen to be father & son respectively are that it is appellant No. 5 (Son) who looks after the entire business and not the father and the goods were brought and booked under Normal & proper invoice and the same were transported as per normal commercial practice. The submission continued that it was they who informed the Customs Authorities about the address of M/s Nidhi Traders (oticee NO. 8) &

Parvider Kumar (notice no. 6) as they procured the same from Transport department and not the Customs Authorities and Customs Authorities could not conduct follow up at the said address even today and they took all the reasonable precautions and they have no malafide intention or mens-rea and department has proved nothing as such. I find that there are two seizures, one at Nepal by Nepal Customs and other by Indian Customs. As far as seizure at Nepal Custom is concerned, there is nothing on record to suggect about the same as no documents have been relied on by the department or produced during hearing to prove that seizure. Ld. Adjudicator has mainly punished the Father-Son duo on that basis when he reasoned that both have played their role in sending he consignment of Red Sanders Wood illegally to Nepal. It is also on record that it was father-Sonduo who provided the addresses of person/firm which booked the prohibited consignment on their own efforts to provetheir bona-fide but the department could not conduct follow up at those address even today as is clear from impugned order itself. The basis that other persons/notices did not appear cannot be a basis for penalties under Section 114 of Customs Act which require mens-rea. The facts clearly suggest that Department has not been able to prove that Appellant No. 1 & 5 have any malafide or mens-rea. Similarly, Shri Rajeshwar Sharma (Appellant NO. 3) who is the manager of Appellant No. 1 has been imposed penalty because of non-appearance on summons. No other grounds/evidence there against the said Appellant. The contention of this Appellant that non-appearance on summons cannot be a ground of imposing penalty under Section 114 of Customs act is well argued and supported by legal provisions. Similar are the contention of Shri Rajesh Sharm (Appellant No. 4) who is loading & unloading incharge of M/s. Himalayan Roadways and are factual as no evidence have been brought by the Department to prove his mens-rea in whole of the act of attempt to smuggle the Red Sanders Wood.

In fact, what Ld. Adjudicator has done is that anyone whose name appears or are concerned with the truck & Consignment in question have imposed penalties but what the investigation has not done is to prove their malafide or mens-rea in any way. This is one of the case where follow up investigation has not been done properly to say the least. The Transporter namely Shri Rajeshwar Kalwar (notice No. 4) has also contented correctly that vehicle under Section 115 of Customs Act can only be seized if there are cavities etc. in the truck itself or the owner of Driver has the knowledge of illegal activities, but I find that there is no such thing proved by the Department.

2. Based on the above findings, he has set aside the penalties imposed on the present Appellant and other Appellants, and also has set aside the confiscation of truck. No Appeal has been filed by the Revenue against this OIA. The present Appeal has been filed by Shri Ishwar Chand Gupta, Proprietor of Himalaya Roadways on the ground that his goods valued at Rs.20,12,150/- were provisionally released against the Security Deposit of Rs. 2 lakhs made by him. Since the Commissioner (Appeals) has fully set aside the OIO and has held that no penalty and confiscation of truck are warranted and set aside the same, the

Appellant is required to get back the security deposit of Rs.

2 Lakhs paid by him when the goods were provisionally released.

3. Mr. Dinesh Gupta, son of the Appellant (Shri Iswar Chand Gupta), has filed a letter along with Death Certificate of Shri Ishwar Chand Gupta on 4th April 2015 stating that Shri Ishwar Chand Gupta has expired on 14/02/2015. It is seen from the records that on 16/04/2015, Mr. Dinesh Gupta has filed the application as successor of Shri Iswar Chand Gupta and has also cured the defects pointed out by the Registry.

4. We have perused the Appeal Papers and documents available herein with the help of the Learned AR.

5. It is seen from the extract of OIA reproduced above that the Commissioner (Appeals) has set aside the penalty on the Appellant and also set aside the confiscation of the truck. Against this OIA, the Department has not filed any Appeal. Hence, the conclusions arrived at by the Commissioner (Appeals) remain unchallenged and are final as on date. Therefore, in this case, the Commissioner (Appeals) should have also ordered for release of security deposit of Rs. 2 Lakhs which was deposited by the Late Shri Ishwar Chand Gupta, towards provisional release of the consignment.

6. After going through the factual matrix, we hold that the Department cannot retain this amount. The Appellant’s successor would be eligible to get the refund of security deposit of Rs. 2 Lakhs.

7. While we hold that the Appellant’s successor is eligible to get the refund of Security deposit, it is for the Adjudicating Authority to cause necessary verification in respect of the claim of the Sri Dinesh Gupta that he is the relevant successor.

8. The Appeal is disposed of thus.

