(2021) 06 CESTAT CK 0044

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 11811, 12279, 12280 Of 2018

Majhar Muzaffar Hussain Sayed And Ors. APPELLANT

Vs

C.C.-Mundra RESPONDENT

Date of Decision : 17-06-2021

Acts Referred:

Citation : (2021) 06 CESTAT CK 0044

Hon'ble Judges : Raju, Technical Member

Bench : Single Bench

Advocate : S.J Vyas, R Subramanya, Sanjiv Kiner

Final Decision : Allowed

Judgement

Sr. No.,"Details of Cigarette Sticks fround

from the container No.

CRXU3199110",SIZE,"Quantity (in number of

Sticks)

1.,"Cigarettes Sticks of Djarum

brand (Clove)","85 mm (tobacco Rod 60

mm and filter 25 mm)","7,60,000

2.,"Cigarettes Sticks of Marso

Brand (Cherry, Strawberry,

Green Apple)","100 mm (tobacco Rod 70

mm and filter 30 mm)","5,80,000

3.,"Cigarettes Sticks of Richman

brand (orange Mint, Gum, Mint,

Grapes)","100 mm (tobacco Rod 70

mm and filter 30 mm)","2,80,000

Total Sticks,,,"16,20,000

(ix) Statements of Shri. Jatin Nathalal Rathod and Nathalal Kanjibhi Rathod were also recorded wherein they denied having anything to do with M/s,,,

Riya Imports and Exports. Both of them stated that Shri. Hasanbhai Kureshi ask them for clearance of the said container. Both of them stated that,,,

Shri. Hasan Bhai Kureshi told him that the container contained Garments.,,,

(x) Statements of Shri. Majhar Muzaffar Hussain was also recorded on 10.10.2016 and 18.10.2016 wherein he stated that he had met with Shri. Jatin,,,

Rathod and Nathala Kanjibhai Rathod two or three times along with Shri. Hasan Bhai Kureshi. He stated that he has no dealing with Shri. Jatin,,,

Rathod and Nathala Kanjibhai Rathod. He further stated that he was the owner of the said goods covered under Bill Of Lading dated 12.08.2016 and,,,

he did not know the owner of the said goods. He further stated that Shri. Hasan Bhai Kureshi of Ahmedabad had taken the work of clearance of said,,,

container from Mundra and he was also involved in stuffing of goods in the said container. He further stated that he knew Shri. Hasan Kureshi only,,,

from last six months and had met him only in March, 2016 through one of his friend. Shri. Hasan Kureshi had asked him for investment for exports of",,,

live stocks. He had given approximately Rs 33 Lacs to Shri. Hasan Kureshi for investment in live stock. When he wanted to take the money back,,,

from Shri. Hasan Kureshi, he was told that he will have to arrange money from Dubai and asked him to a accompany him to Dubai. He further stated",,,

that during the stay, in Dubai no money was returned by Shri. Hasan Kureshi. He further stated that Shri. Hasan Kureshi took him to meet a person",,,

name Shoaib who asked him about any contacts at Mundra Customs. He further stated that Shoaib asked offered Shri. Hasan Kureshi for Smuggling,,,

of cigarettes at Mundra port and Shri. Hasan Kureshi agreed. He further stated that Shri. Hasan Kureshi and Shoaib supervised stuffing of goods in,,,

said container. He further stated that he did not know Ranjit Jha of M/s. Riya Imports and Exports. He provided some photographs and videos during,,,

the statement that show that the stuffing has been done in presence of Shri. Hasan Kureshi.,,,

(xi) Statement of Shri. Hasan Kureshi has been recorded on 18.10.2016. He admitted having taken Rs. 33 lacs from Majhar Bhai. He stated that he,,,

had already returned of Rs. 5 lacs and was yet to pay Rs.28 lacs. He stated that Majhar Bhai Called him and told him about smugglings of cigarettes,,,

and concealed behind the garments if further stated that Majhar Bhai asked him about any source available at Mundra Port through which imported,,,

goods could be cleared. He stated that he contacted Nathalal Rathod who served Jatin Rathod working as security person at Mundra port. He stated,,,

that Nathalal Kanjibhai Rathod from promised him regarding clearance of cigarettes concealed behind the garments he took Rs 2 Lakhs advance for,,,

clearance of cigarettes.,,,

4. From the above sequence of grievance, it is seen that the entire case based on primarily on statement. The charges have also been established on",,,

the basis of these statements.,,,

5. It is seen that all three notices have denied any knowledge of the transaction of presence of cigarettes in the containers. There is no specific,,,

primary evidence produced by revenue, except the statements, to establish that the notices were aware of the presence of cigarettes in the container.",,,

It was argued by Learned Counsel for Majhar Bhai that they had demanded the cross-examination of witnesses however the same was not allowed.,,,

Learned counsel argued that no reliance can be placed on the statements if crossexamination has not been allowed. Since it is seen that there no,,,

major evidence other than the statements has been produced about the knowledge of the appellants about presence of the cigarettes in the container.,,,

It is on paramount importance that the statements are properly tested with crossexamination..,,,

6. Since Cross-examination is not granted the impugned order is set aside and matters are remanded for fresh decision after giving opportunity of,,,

cross examination to the appellants. The appeals are allowed by way of remand to original adjudicating authority.,,,

(Pronounced in the open court on 17.06.2021),,,

