(2013) 07 DEL CK 0370

In the Delhi High Court

Case No : CUS. A.C. No. 16 of 2013

M.L. Chandra — APPELLANT

Vs

Commissioner of Customs — RESPONDENT

Date of Decision : 15-07-2013

Acts Referred:

Citation : (2014) 305 ELT 266

Hon'ble Judges : Sanjiv Khanna, J;Sanjeev Sachdeva, J

Bench : Division Bench

Final Decision : Disposed Off

Judgement

1. Learned counsel for the appellant states that she has obtained instructions. Appellant had deposited Rs. 1 lac and is ready and willing to deposit another amount of Rs. 1 lac. Penalty of Rs. 3 lac was imposed on the appellant which has been upheld by the Tribunal in their order dated 20th September, 2012. Having heard learned counsel for the parties, the following substantial question of law is framed:-

Whether the Customs, Excise and Service Tax Appellate Tribunal was right and justified in imposing penalty of Rs. 3 lacs on M.L. Chandra, though it has recorded that one Mr. Neeraj Jain was the main culprit.

2. As per the findings recorded by the Tribunal, M/s. Amber Traders Company and M/s. Zigma International were involved in attempting fraudulent exports to claim duty drawbacks. The declared value of the consignments of M/s. Amber Traders Company was Rs. 44,49,200/-, but its actual value was only Rs. 2,10,000/-. On examination of the consignments, it was found that what was actually being exported was old lady dresses fabricated out of worn fabric. These were not properly stitched and were of inferior quality and were unfit for commercial sale. Thus, there was misdeclaration of goods and over-valuation to make undue gain under the Duty Free Relinquishment Certificate Scheme (DFRC). To this extent, the findings recorded by the Tribunal are clear and

categorical and do not require any interference. There was misdeclaration of the export goods by M/s. Amber Traders Company. M/s. Amber Traders Company had not filed any appeal against the Order-in-Original before the Tribunal and they are not the appellant before us.

3. M/s. Amber Traders Company situated at Vishal Chamber 111, Section 18 had obtained IEC code and had a bank account in Jammu and Kashmir Bank, Sector-18, Noida. The firm was shown as a sole proprietorship of one Santosh Kumar Jain. However, in the account opening form, it was noticed that M.L. Chandra''s photograph was described/noted as that of Santosh Kumar Jain. The respondents relied upon statement of M.L. Chandra u/s 108 of the Customs Act recorded on 31st January, 2004, in which he had accepted his involvement in fraudulent export of rags in the guise of readymade garments on the advice of Neeraj Jain. He had stated Neeraj Jain was the investor and he was to share profit with Neeraj Jain. 20% being the appellant''s share.

4. In the order written by the judicial member, there was no reference to the retraction made by M.L. Chandra on 5th October, 2004. In the order written by the Technical Member, this aspect has been noticed and it is recorded that the case and alibi of M.L. Chandra was different. M.L. Chandra had argued that the application filed with DGFT and the bank account designated to get export proceeds did not show his photograph. There was nothing on record to show link between M.L. Chandra and M/s. Amber Traders Company except for the statement dated 31st January, 2004, which was retracted on 5th February, 2004.

5. The first contention about the photograph has not been adverted to. On the second contention the technical member has noticed and observed that M.L. Chandra had appeared before the Customs authorities on 31st January, 2004 under instructions of Neeraj Jain, the de facto and main culprit behind the fraud. Therefore, the retraction made on 5th February, 2004 should not be accepted and it cannot be said that the earlier statement was not correct or was recorded under duress.

6. We notice that the total fine imposed on Neeraj Jain is Rs. 7 lacs. Penalty of Rs. 1 lac each has also been imposed on Shailender Singh and Santosh Kumar Jain, but they were not appellants before the Tribunal in the batch of appeals decided by the impugned order. It is submitted that when penalty of Rs. 7 lacs has been imposed on Neeraj Jain, then the penalty of Rs. 3 lacs on appellant M.L. Chandra is not justified even if we accept that M.L. Chandra was to share profit with Neeraj Jain in the ratio of 80%:20%. Penalty should be proportionate. It is also submitted that penalty of Rs. 1 lac has been imposed on Santosh Kumar Jain, but penalty of Rs. 3 lacs has been imposed on the appellant. Santosh Kumar Jain, it is claimed and submitted is the recorded proprietor.

7. It is brought to our notice that M.L. Chandra was hospitalized immediately after recording of his statement dated 31st January, 2004 and the retraction dated 5th February, 2004 was made while the said appellant was still in hospital.

8. Keeping in view the aforesaid facts, specially, the quantum of fine imposed on Neeraj Jain and Santosh Kumar Jain, we accept the statement made by the appellant and reduce the fine imposed on the appellant from Rs. 3 lacs to Rs. 2 lacs. Rs. 1 lac has already been deposited by the appellant as pre-deposit for hearing of the appeal. Balance amount of Rs. 1 lac will be deposited within four weeks.

9. Substantial question of law is answered accordingly. The appeal is disposed of. No costs.

