(2015) 09 AHC CK 0152

In the Allahabad High Court

Case No : Customs Appeal Nos. 3 and 1-2 of 2015

Om Logistics Ltd.	APPELLANT
Vs	
Commissioner of Customs, Lucknow	RESPONDENT

Date of Decision : 22-09-2015

Acts Referred:
Customs Act, 1962 — Section 110(2), 111, 112, 115, 119

Citation : (2015) 325 ELT 483

Hon'ble Judges : Narayan Shukla and Akhtar Husain Khan, JJ.

Bench : Division Bench

Advocate : A.P. Mathur and R.C. Pathak, for the Appellant; Dipak Seth and Rajesh Singh Chauhan, for the Respondent

Judgement

1. We have heard Mr. A.P. Mathur, learned counsel for the appellants as well as Mr. Dipak Seth, learned counsel for the respondents. After hearing the learned counsel for the parties as well as perusal of the record, we proposed to decide the appeals finally at the stage of admission itself with the following order.

2. The appellants have framed the following substantial question of law:

"(i) Whether the Hon''ble Tribunal was justified in deciding the appeals in a casual manner without perusing the records before it?

(ii) Whether the Hon''ble Tribunal can decide the Appeals without giving findings on each contentions raised and argued during the course of hearing?

(iii) Whether the Hon''ble Tribunal was justified in ignoring the vital fact that the order of the Commissioner was under challenge before them and they were duty bound to deal with all the findings of the Commissioner in the light of the records of the case?

(iv) Whether the Hon''ble Tribunal was justified in imposing penalties of the Appellant when the records in question did not belong to the appellant, who are only a transporter and they are only concerned with freight as there is nothing on record to show that they received extra money for transporting contraband goods.

(v) Whether the Tribunal was justified in imposing penalties where the seizure was not in accordance with the procedure as the possession of the goods and the truck was not taken by the Customs Officers from the Trade Tax Department after 10 days of detention of the goods in question from the godowns of the Trade Tax Department where the goods were kept after verifying the contents of the packages by opening the same by the Trade Tax Officers?"

The reliefs as prayed by the appellants are as follows:

"That the appellants, therefore, prays that this Hon''ble Court may expeditiously be pleased to allow the present Appeal on the basis of substantial questions of law and grounds formulated in the Memo of Appeal."

3. The appellants are engaged in the business of the Transport and Logistics services all over India by hiring trucks of other owners when required for transporting their customers goods. They had hired one truck bearing Truck No. HR38M/9077 for transportation of goods. On 21-6-2007, at Naubatpur Trade Tax Check Post, the said truck was checked by the Sales Tax Authorities. The owner of the truck is named as Kuldeep Singh. The truck was loaded with foreign origin gas cylinders without papers in the garb of machinery and auto parts and therefore, the Trade Tax Officials seized the goods and held the truck in the premise of Trade Tax Office on the same day within an hour. However, it parked in the Trade Tax Office being in the possession of the Customs Officers till 30-6-2007. The Indian goods loaded in the truck were released by the officers of Trade Tax Department. The alleged contraband goods and the truck was taken by the Customs Officers to Varanasi Customs Office where the witnesses were called, pursuant to which a show cause notice dated 26-12-2007 was issued to the appellants. The appellants submitted a reply to the show cause notice denying their knowledge of the contraband nature of the goods. They also submitted that since they were not aware of the nature of consignment, they did not open the consignment in question for verification of nature of the goods. It was opened only when the nature of goods was taken up by the Customs Officers. After receiving the reply of the show cause notice, the Commissioner of Customs adjudicated upon the goods vide order dated 11-11-2008 and imposed a personal penalty of Rs. 2,50,000/- on the appellant, who hired the truck and Rs. 10,000/- on the driver. Learned Commissioner also confiscated the truck and proposed to release the same on payment of Rs. 1,00,000/-.

4. Mr. Mathur, learned counsel for the appellants has submitted that the Tribunal has decided the appeal in casual manner without considering the appellants'' reply to show cause notice as well as the grounds raised in the appeal completely on technical ground on the question of penalty. Therefore, the matter requires to be remanded to the Tribunal to be heard on merit after noticing the parties.

5. Per contra, Mr. Dipak Seth, learned counsel for the Customs Department has

submitted that the Commissioner of Customs had examined the facts of the case in detail and framed the following issues for determination:

"A. Whether the show cause notices issued to the noticees are hit by time limit if six months as envisaged under Section 110(2) of the Customs Act, 1962 read with Section 124 ibid.

B. Whether the seized foreign origin small gas cylinders Refrigerant 22 [Chlorodifluromethane] valued at Rs. 4,00,000/- as detailed in the Panchnama dated 1-7-2007 are liable to confiscation under Section 111 of the Customs Act, 1962.

C. Whether the seized Indian origin goods valued at Rs. 18,97,029/- used for concealing the smuggled CFC Cylinders during transportation as detailed in Panchnama dated 1-7-2007 are liable for confiscation under Section 119 of the Customs Act, 1962.

D. Whether the seized truck valued at Rs. 6,00,000/- used for transportation of smuggled cylinders is liable to confiscation under Section 115 of the Customs Act, 1962.

E. Whether the penalty under Section 112 of the Customs Act, 1962 is imposable on each one of the noticees mentioned in the Show Cause Notice dated 26-12-2007 and corrigenda dated 28-12-2007."

6. The learned Commissioner had dealt with each and every issue on its merit and recorded the finding that the appellants have neither disputed the recovery of seized foreign origin Refrigerant 22 cylinders from the seized truck nor made any such allegation as Customs officers had not followed the proper procedure for effecting the seizure. All the seizure formalities were done in presence of witnesses, who had voluntarily signed the Panchnama dated 1-7-2007. With regard to the seized of foreign origin small cylinders Refrigerant 22 worth Rs. 4,00,000/-, he has given the finding that M/s. Bengal Automobiles, who was consignor of the seized cylinders and Shri Arjun Das as well as Shri R. Sehgal who have to take the delivery of the consignment, were not found available at the given address, which led the Commissioner to arrive at conclusion that the persons involved with seized cylinders were aware of its foreign origin character and they had deliberately shown fictitious addresses to ensure that law enforcing agencies should not reach to them in case of interception of the goods. The markings present on the packing and seal of seized gas cylinders also suggests its foreign origin character. The learned Commissioner found that the consignment was booked by M/s. Nokia Siemens Networks India Pvt. Ltd. and M/s. Progressive Engineering Company. The goods were handed over to the transporter. They had denied from any concern with the contraband cylinders.

7. Since, there was nothing on record to suggest any nexus between the seized foreign origin Refrigerant 22 and Indian origin goods, therefore, in such a situation, learned Commissioner observed that keeping in view the value of

Indian origin goods i.e. valued at Rs. 18,97,029/-, there was no question to use the seized cylinders worth Rs. 4,00,000/- just to conceal the contraband goods. On this finding, he released the confiscated goods of Indian origin. However, since the foreign Refrigerant 22 cylinders were undisputed, which was carried by the seized truck, it was found that the truck was engaged in transportation with M/s. Om Logistics Ltd. under an agreement, who had full knowledge of the fact of smuggled and illegal nature of the seized Refrigerant 22 cylinders. This finding was also supported with the fact that no Bill/Invoice was accompanying the said cylinders declared as ''Machinery and auto parts''. One fact is necessary to mention here that the consignor''s Bills/Challan/Invoice/declaration or other goods found loaded in the seized truck were not accompanying the consignment notes. Therefore the seized vehicle No. HR38M/9077 was held liable for transportation under Section 115 of the Customs Act, 1962. That show that the Commissioner also considered to impose personal penalties on the following noticees, under Section 112 of the Customs Act, 1962:

8. Aggrieved appellants filed an appeal before the Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi. Since the appellants, who are the transporter of the goods did not own the goods nor the trucks as they simply claimed themselves as transporter without having ownership over the truck and seized foreign goods, the Tribunal did not felt it appropriate to raise this question and examined only the question of penalty and upheld the quantum of penalty imposed upon all the appellants by the Commissioner.

9. At this stage, learned counsel for the appellants drew attention of this Court towards the memo of appeals to establish that they had raised several grounds to appeal, but no appeal had been examined on its merit.

10. The appellants before us are simply transporter without claiming ownership over the truck of the seized goods. This fact is not disputed that the seized foreign origin gas cylinders were loaded in the truck hired by the appellants and the appellants as well as the driver of the truck had not been able to identify either consignor or consignee of the seized goods. Therefore, the appellants'' involvement in loading foreign origin gas cylinders in the truck in question could not be denied.

11. Section 111 of the Customs Act, 1962 provides that any prohibited goods found concealed in any manner in any conveyance shall be liable to confiscation. Section 112 of the Customs Act, 1962 provides that any persons, who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111 shall be liable to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater.

12. In this case, the seized goods was valued worth Rs. 4,00,000/-. Therefore, the appellate authority imposed the penalty. The penalty imposed upon the

appellants is less than the value of the goods, which has been upheld by the learned Tribunal.

13. Regard being had to the aforesaid submissions, we are of the view that the learned Tribunal has rightly rejected the appellants'' appeal. In the result, the appeals stand dismissed.

