(2011) 04 KAR CK 0188

In the Karnataka High Court

Case No : CSTA No. 17 of 2006

Ramesh Solanki APPELLANT

Vs

Commissioner of Customs, Bangalore RESPONDENT

Date of Decision : 18-04-2011

Acts Referred:
Customs Act, 1962 — Section 108, 2 (26)

Citation : (2012) 278 ELT 316

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : Kiran S. Javali, for the Appellant; Pradeep Gaonkar and V.Y. Kumar, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—This appeal is by the assessee challenging the orders passed by the Tribunal, appellate authority and the assessing authority, holding him liable to pay duty, interest and penalty. The appellant Ramesh Solanki is the Managing Director of a Company known as M/s. Labdhi Computech Pvt. Ltd. Which is engaged in the business of trading in computer parts and accessories. One Praveen is the proprietor of M/s. Suntech which is a unit registered with Sales Tax Authorities as well as holder of import Export Code. In pursuance of the investigation conducted against Mr. Praveen the Customs Authorities found grave irregularities in importing the goods. They issued a show cause notice dated 21-3-2003 alleging that the appellant was the person who had master minded the entire activity, right from planning, creation managing and monitoring of all operations of M/s. Suntech with a mala fide intention to evade customs duty. He was the brain behind misdeclaration, non-declaration and over declaration and also under valuation of the goods consigned to M/s. Suntech to respect of all consignments received from M/s. Guru Electronics, Singapore. Mr. Praveen is the employee of the appellant and not the actual owner of M/s. Suntech. The appellant is the real owner of M/s. Suntech. It was alleged that the past consignment that were imported by M/s. Suntech were in fact undervalued and also excess quantities of goods were imported as against the declared quantities. To substantiate the allegation that the consignment were under valued and misdeclared, several faxes allegedly issued by M/s. Guru Electronics were relied upon. Therefore the appellant was called upon to show cause as to why he should not be treated as actual importer of the bill of entry pending clearance and as to why the goods seized with respect to the bill of entry should not be confiscated and penalty be imposed on the appellant. The appellant sent reply denying all the allegation. Personal hearing was given to the appellant. In fat, the Customs Authorities have recorded the statement u/s 108 of the Customs Act, 1962 of various persons connected with these transactions such as one Venugopal, Subramanya Sharma, G.S. Shekar Rao, Praveen, G.B. Kumara Swamy and Narendra and Girish. The authorities after considering the statement of objection held that Ramesh Solanki be treated as actual importer in respect of the goods imported vide bill of entry No. 365754 dated 27-9-2002 in the name of M/s. Suntech, Bangalore, the said goods were misdeclared and they were liable for confiscation an amount of Rs. 10,37,509.00 was levied as customs duty and a penalty of Rs. 25,00,000.00 was imposed.

2. Aggrieved by the said order the assessee preferred an appeal to the Tribunal. The Tribunal on reappreciation of the entire material on record taking note of the statements of various persons recorded and other material on record, up held the order of the adjudicating authority in so far as appellant is concerned and in respect of others, the penalty was reduced. The appellant has preferred this appeal against the said order of the Tribunal.

3. The appeal was admitted to consider the following substantial questions of law.

(1) Whether the Tribunal has rightly consigned the provisions of Section 2(26) of Customs Act, 1962 which defined importer and consequently right in law to hold appellant as importer?

(2) Whether the Tribunal was right at law to hold the appellant as the importer without rejecting Mr. Praveen as not being the importer?

(3) Whether the Order of Respondent No. 1 and confirmed by the Hon''ble Tribunal was right at law in treating Sri Praveen of Suntech to be a dummy importer without there being a change/proposal to that effect in cause notice?

(4) Whether the Tribunal was right in Law to direct confiscation of the goods under import when Guru Electronics Singapore PTE Ltd. had sought for its re-export?

(5) Whether the Tribunal was right at law to have confirmed the confiscation of the goods under import and confirmation of penalty on the Appellant, when Guru Electronics Singapore PTE Ltd. had made a claim for the goods?

(6) Whether the Respondent No. 1 and the Hon''ble Tribunal were right in law in holding that the person who field the manifest originally was not the importer at

all and contrary to Section 2(26) of Customs Act?

(7) Whether the Respondent and the Tribunal were right in holding that the Appellant was the Proprietor of Suntech on the basis of third party opinions recorded in the statement which was not corroborated by any evidence and contrary to Section 2(26) of Customs Act?

(8) Whether the Tribunal was right at law in holding the Appellant as the Importer in the background at the order of the Tribunal in C. 101/2003, dated 31-1-2004 which was binding on the Department?

(9) Whether the Tribunal was right in law for having passed an order contradictory to the order in C.No. 101/2003, dated 31-1-2004?

(10) Whether the Tribunal was right in law in disregarding the observations of the Tribunal by Final Order No. 267/2004 dated 22-1-2004?

4. We have heard the learned Counsel for the parties.

5. The learned Counsel for the appellant assailing the impugned order contended that in the first place, the show cause notice issued is defective as it has been issued to two persons. If Praveen is only the name lender, no steps should have been taken against him and therefore the show cause notice issued is not in accordance with law. Further he contended that the material on record shows that the appellant was nothing to do with the M/s. Suntech importing the goods by the said firm. Merely on the basis of the fax messages, no liability can be foisted on the appellant. In fact, the learned Counsel took us though the evidence recorded by Praveen who owns the responsibility. Therefore, it was contended that the impugned order is illegal and contrary to law. Though the material on record shows that the appellant is nothing to do with M/s. Suntech, which is the proprietary concern of Praveen., a close friend of the appellant, the statement of various persons recorded and the documentary evidence on record, coupled with the investigations made by the Customs Authority as various premises, clearly demonstrates as rightly held by the authorities that the appellant is the kingpin, he is the master mind behind the entire activity right from planning, creation, monitoring and managing of all the operations of M/s. Suntech with a mala fide intention of evading customs duty. This is a clear case of mis-declaration, non-declaration and over declaration and under valuation of the goods consigned to M/s. Suntech in respect of consignment received from M/s. Guru Electronic, Singapore is made out. Mr. Praveen, though styled himself as proprietor of M/s. Suntech in fact was an employee of the appellant. The finding recorded by two fact finding authority is fully supported by the legal evidence on record. It is purely a question of fact. The finding recorded by the tow authorities is legal and proper and do not suffer from any legal infirmity which calls for interference from us. In the light of what is stated above the substantial question of law is answered in favour of the revenue and against the assessee. In that view of the matter, we do not see any merit in this appeal and accordingly it is dismissed.

