(2006) 10 DEL CK 0160

In the Delhi High Court

Case No : Customs Act Case No. 04 of 2006

Suren International Ltd. APPELLANT

Vs

Commissioner of Customs and Others RESPONDENT

Date of Decision : 17-10-2006

Acts Referred:
Customs Act, 1962 — Section 127C, 130

Citation : (2007) 136 DLT 494

Hon'ble Judges : Vipin Sanghi, J;Madan B. Lokur, J

Bench : Division Bench

Advocate : M. Chandrashekhar and Manish Pushkarna, for the Appellant; Biswajit Bhattacharya and A. Vohra Bandhu, for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—This is an appeal u/s 130 of the Customs Act, 1962 (for short `the Act'') directed against the final order bearing No. 818-829/05-Cus., dated 9-13th May, 2005 passed by the Customs Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as `the Tribunal'') in Appeal Nos. C/388/03, C/387, C/389 to 397/03 and C/549/03. This appeal before the Tribunal was preferred against the Order-in-Original bearing No. AKR/CC/ICD/TKD/31&32/03 dated 30th June, 2003 passed by the Commissioner of Customs, ICD, Tuglakhabad, New Delhi.

2. By the impugned order the Tribunal has dismissed the first appeal filed amongst others, by the appellant against the order in Original dated 30th June, 2003.

3. The facts in brief are that the Appellant was found to be illegally importing Tin, Nickel and Zinc by concealing these metals in consignments declared as of Aluminium scrap. Excess quantities of Aluminium scrap and import of Copper scrap in place of Aluminium scrap was also there. In respect of 17 container loads, the Appellant had filed Bills of Entry. Part of the goods i.e. 23 container

load consigned to the Appellant had reached ICD, Tuglakhabad and these goods were seized by the Customs Authorities before any bills of entry were filed.

4. The Customs authorities carried out search operations and investigations at many places including at the house of Mrs. Renu Mahant and her husband Mr. Harish Kumar and the godown of the Appellant in Sundervan area of Vasant Kunj. During the search it transpired that certain goods had been removed from the godown, a few hours before its search on 7th August, 2001. The neighborhood forest area was combed by the officers and they located two trucks loaded with metals in slab form. The drivers of these trucks stated that the goods had been loaded from the godown of the Appellant. Verification of the goods showed that over 21MT of Zinc slabs of Chinese origin were loaded on the trucks. Thereupon these goods and the trucks were seized by the authorities. Subsequent search of the godown of one, Sh. Gajender Singh at Ganga Nursery in Vasant Kunj led to the seizure of 132 Mts of Tin ingots and over 36 Mts of Nickel on 10th August, 2001. Business records and files of the Appellant and M/s Gaurav Exim and other business entities were also seized from the farm house of one Mr. Hans Nagar at Vasant Kunj.

5. In response to summons issued on a couple of occasions, Smt. Renu Mahant, A Director of the Appellant and Shri Harish Kumar, her husband, disowned the goods imported by them in respect of 10 containers. It was claimed that the goods had been wrongly supplied. The representatives of the Appellant did not participate in the process of weighment and examination of the goods in the containers which revealed gross misdeclaration of weight and description of goods, the declaration made in the Bills of Entry and invoices filed by the Appellant and also the documents filed by the Shipping Line. As opposed to declared quantities of 357.226 MTs and 99.199 MTS respectively of Aluminium scrap and Copper scrap in the 40 containers, the examination of the goods revealed 365.89 MTs of Aluminium scrap and 300.652 MTs of Copper scrap apart from 40MTs of prime quality Tin and 42 MTs of prime quality Nickel. These primary metals were not at all declared by the Appellant.

6. Pertinently the appellant had also filed an application before the Settlement Commission seeking a settlement of the disputes without going into adjudication proceedings. The appellant made various admissions before the Settlement Commission. The Appellant in effect admitted that the Zinc ingots with foreign markings (Chinese) were not duty paid and that they are prepared to pay the duty therefore. This admission clearly shows the clandestine dealings of the Appellant in relation to the goods in question. However, vide order dated 15th July, 2002 the Settlement Commission, in view of the nature, circumstances of the case and complexity of investigation involved therein did not proceed with the applications filed before it u/s 127C of the Act and rejected the applications filed by the appellant and others involved in the illegal imports.

7. The Commissioner of Customs, after issuance of a show cause notice proceeded to confiscate the goods and imposed penalties upon the appellant, M/s

Gaurav Exim Pvt. Ltd and the individuals involved in the illegal imports.

8. The Appellant and others involved, preferred appeals before the Tribunal which have been dismissed by the impugned order.

9. We have heard the learned Counsel for the Appellant in the matter and also gone through the records of this case. The learned Counsel has raised arguments touching upon factual aspects of the case, which neither we are in a position to interfere with, nor are we inclined to do since we do not find any perversity in the impugned order, or even the order-in-original passed by the Commissioner of Customs.

10. The extent and nature of investigation carried out and information and evidence gathered by the authorities in this case is substantial. M/s. Gaurav Exim Private Limited has also filed Customs Case No. 3/2006 which has been heard by us along with the present appeal. We have rejected the said appeal by our order of even date since no substantial question of law is shown to have arisen in that appeal. The order in Original passed by the Commissioner of Customs forms a part of the record in Customs Act Case No. 3/2006 filed by Gaurav Exim Private Limited which is a common order dealing with, inter alia, the appellant as well. We have perused the said order and find that the same is well reasoned and the findings of the Commissioner are based on cogent materials unearthed by the customs authorities during investigation.

11. The Tribunal has analysed and appreciated the facts in detail and we may only quote para 10 of the order of the Tribunal for the present:

During the investigation and adjudication proceedings the appellant M/s Suren International Limited and their suppliers had also put up a defense that discrepancy in the goods is the result of wrong supply, and that the goods were not intended for M/s Suren International Limited. Reliance was also placed on some purported fax and other correspondence between the parties. The Commissioner rejected this Explanation after detailed discussion as is to be seen in paras 170 and 171 of the impugned order. It is his finding that the method of concealment of misdeclared goods i.e. scrap being packed in the front of the container and valuable goods being kept hidden behind the scrap under declaration of weights, and other factors point only to deliberate concealment of the goods with intention to smuggle. He has also stated as to why the correspondence placed is not acceptable. During the hearing before us, specific reliance was placed on the purported fax dated 10th August, 2001 from the supplier M/s SMC Industry Singapore; cancellation of order under letter dated 6th August, 2001 etc. We are of the opinion that the evidence on record fully supports the Commissioner''s finding regarding concealment and not the Explanation that the goods were wrongly sent. The examination of the consignments fully establishes that huge quantities of undeclared prime metal were being concealed in the consignments declared as scrap. We are accordingly, of the opinion that order of confiscation and imposition of penalty passed against

M/s Suren International Ltd., and M/s Gaurav Exim are fully justified. We also do not find any justification to interfere with the quantum of redemption fines and penalties imposed as they can not be considered disproportionate or excessive, given the value of the offending goods, pre-meditated nature of the offence, and the amount of duty sought to be evaded.

12. We find ourselves in agreement with the aforesaid conclusion of the Tribunal. Like in the case of Gaurav Exim Pvt. Ltd, the appellant in this case also has raised questions, which are questions of fact and cannot be considered in these proceedings u/s 130 of the Act. No substantial question of law has been raised by the appellant, which requires our consideration

13. Accordingly we dismiss this appeal.