

2014 (4) ECS (271) (Tri.- Del.)

In the Customs Excise & Service Tax Appellate Tribunal
West Block No.2, R. K. Puram, New Delhi-110066

SHRI CHANDER SHARMA

V/s.

C.C., NEW DELHI

Date of Hearing: 06.08.2014

Customs Appeal No.C/38/2010-CU[DB]
(Arising out of Order-in-Original No.68/2009 dated 01.09.2009 passed by
Commissioner of Customs, New Delhi)

Appearance:

Ms. Surabhi Sinha, Advocate

Shri V.P.Batra, DR

For the Appellant

For the Respondent

CORAM:

Hon'ble Mr. D.N. Panda, Judicial Member

Hon'ble Mr. Manmohan Singh, Technical Member

(Final Order No. 53214/2014 Dated: 06.08.2014)

"Once the goods were misdeclared that becomes smuggled goods under section 2(39) of the Customs Act 1962. This is done by misdeclaration and fabricating evidence and antedating the same. Record does not reveal bonafide of the consignor as well as the consignee who had hand in glove for misdeclaring description of the goods. The appellant was admittedly to be beneficiary of the goods imported fraudulently. Even though the appellant has not filed the bill of entry, the appellant is answerable under the law to the import by its intimate connection with the above smuggling." (Para 5)

"Here is a case where there is no expression of interest for re-export. Rather the consigner says that re-export will not be cost effective. This also proves hand in glove of both the parties to confirm penalty." (Para 6)

PER: D.N.PANDA:

Ld. Counsel vehemently opposes the adjudication on the ground that despite the order of consignee to the consigner to send mutilated goods, the consigner wrongly consigned un-mutilated rags destined to Pakistan. On inspection, Customs found that the goods were un-mutilated rags for which allegation of mis-declaration of description of goods was made against the appellant. The appellant satisfied the authority that there

were adequate correspondence between the consignee and consigner to compensate for the loss committed in respect of the goods sent wrongly as above. The consigner also agreed to compensate. Affidavit to this effect has been filed.

2. It was further objected by the appellant on the ground that the appellant has already suffered huge loss for which the penalty of Rs.3,00,000/- ought not have been imposed when the goods were confiscated and not claimed by appellant. The appellant has no objection, if goods are auctioned and the department has already auctioned the goods. In view of such circumstance, penalty of Rs.3,00,000/- imposed shall not be justified.
3. Revenue on the other hand, submits that where there was misdeclaration of description was found, the goods were liable to confiscation and the appellant when failed to exercise its option to redeem the goods, those were absolutely confiscated. That has resulted with penalty of Rs.3,00,000/- Lakhs.
4. Heard both sides and perused the records.
5. There is no doubt at all on the record that the goods were found to be mis-declared in its description when the unmutilated goods were found as against declared mutilated goods in the shipping documents and other connected documents. The appellant cleared the bills making payment through Indian Bank. This is recorded by Id. Adjudicating authority in para 19 (5) of his order. He has recorded the sequential evidence in such a manner, that reflects his proper application of mind as to his minute examination of the gravity of the case. Subsequent arrangement between the appellant and consigner is vividly clear as the letter sent on 07.12.2007 shows the date thereon as 17.01.2007. Once the goods were misdeclared that becomes smuggled goods under section 2(39) of the Customs Act 1962. This is done by misdeclaration and fabricating evidence and antedating the same. Record does not reveal bonafide of the consignor as well as the consignee who had hand in glove for misdeclaring description of the goods. The appellant was admittedly to be beneficiary of the goods imported fraudulently. Even though the appellant has not filed the bill of entry, the appellant is answerable under the law to the import by its intimate connection with the above smuggling. The goods became dutiable under section 12 of the Customs Act 1962. Accordingly, the appellant importer is answerable for the mis-

declaration. The appellant did not come out with clean hands to prove without leaving any doubt against the mis-declaration. The goods were proved to be smuggled goods. That became property of the state. Re-export of the above import was not sought by the appellant.

6. Ld. Counsel relied on the decision of the Apex Court in the case of Union of India vs. Smpat Raj Dugar reported in 1992 (58) ELT 163 (SC). Placing para 19 of the judgement, ld. Counsel prayed for immunity. But in that case import was subject to import license. Present goods were not. Further, in that case re-export was sought, since the importer did not intend to clear the goods. But here is a case where there is no expression of interest for re-export. Rather the consigner says that re-export will not be cost effective. This also proves hand in glove of both the parties to confirm penalty to the tune of Rs.2,00,000/- in the fitness of the circumstance of the case. Accordingly, penalty of Rs.3,00,000/- imposed is reduced to Rs.2,00,000/- allowing the appeal parly.

[Dictated & Pronounced in the open Court].