

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2620-2622 OF 2004

Commnr. Of Customs, Lucknow

Appellant(s)

VERSUS

G.P.Jaiswal & Ors.

Respondent(s)

WITH

CIVIL APPEAL NO. 4341 OF 2004

O R D E R

In C.A.Nos.2620-2622/2004

One M/s. Yash Export had exported consignment of PVC soles and the valuation which was entered and declared for export of the aforesaid consignment was grossly over invoiced. It was found that though the said PVC soles were purchased from Agra at Rs.6.25 per pair, they were misdeclared and value as shown in the invoices at Rs.380 per pair. It was all done fraudulently to avail DEPB credit to the tune of Rs.24,12,114/-. When the aforesaid facts came to the notice of the appellant/Custom Authorities, a show cause notice dated 10.3.2000 was issued under Section 124 of the Customs Act, 1962, for confiscation of the aforesaid goods under Section 113(d) of the Customs Act, 1962.

Insofar as these three respondents are concerned, they were also roped in with the allegations that they had colluded with M/s. Yash Export in mentioning the inflated figure in the invoices. Order-in-Original dated 29.4.2002 was passed, after completing the required formalities confiscating the goods under Section 113(d) of the Act. At the same time option was given to the exporters to seek release of those goods on payment of fine of Rs.2,50,000/- in lieu of confiscation.

In the Order-in-Original passed by the Commissioner, penalties on the three respondents to the tune of Rs.25,000/-, RS.50,000/- and Rs.25,000/- respectively were also imposed. Insofar as respondent no.1 Sh. G.P.Jaiswal is concerned, he was del-credere agent in this case. Respondent no.2 Rakesh Mishra was person who had looked after the container ICD, Varanasi, and received payment of service rendered on behalf of one Mr. Sudhir Malik. Respondent No.3-Rakesh Srivastava was working as Superintendent of ICD, Varanasi.

These respondents filed appeals against the order of the Commissioner before the CESTAT. CESTAT has, Vide impugned judgment dated 12.11.2003, set aside the order of the Commissioner on the ground that as it was a case of over invoicing, action under Section 113(d) of the Act for

confiscation of the goods could not have been taken for the aforesaid default/breach on the part of the exporter. As a result, it is stated that once the goods were not liable for confiscation, the question of imposition of penalty under Section 114(I) of the Act also would not arise.

The main submission of Mr. K. Radhakrishnan, learned senior counsel appearing for the Department, is that the aforesaid view of the Tribunal that it was not a case where the goods could not be confiscated under Sec.113(d) of the Act is erroneous, and law in this behalf is well settled by the judgment of this Court in Om Prakash Bhatia vs. Commissioner of Customs, Delhi (2003) 6 SCC 161. He also brought to our notice the judgment of the CESTAT itself which is rendered in the appeal that was filed by the exporter in the instant case challenging the Order-in-Original on the ground that there could not have been confiscation under clause (d) of Section 113 of the Customs Act and the said appeal was dismissed by the Tribunal following the aforesaid judgment in the case of Om Prakash Bhatia and the judgment Yash Exports Inc. vs. Commissioner of Customs, Lucknow reported in 2005 (179) E.L.T. 238. We find force in the aforesaid submissions of Mr. K.Radhakrishnan.

A perusal of the judgment of this Court in Om Prakash Bhatia would reveal that under identical circumstances the

Court held that provisions of clause (d) of Section 113 of the Act would get attracted and the goods may be liable for confiscation when the value of the goods in the invoices is exaggerated. Our purpose would be served by referring to and reproducing paras 18, 19 and 20 of the said judgment which read as under:

18. From the aforesaid provisions, mainly, Section 2(41) read with Section 14 of the Act and Section 18 of the Foreign Exchange Regulation Act, 1973, it is crystal clear that:-

(a) The exporter has to declare full export value of the goods (sale consideration for the goods exported).

(b) The exporter has to affirm that the full export value of the goods will be received in the prescribed manner.

(c) If the full export value of the goods is not ascertainable, the value which the exporter expects to receive on the sale of the goods in the overseas market.

(d) The exporter has to declare true or correct export value of the goods, that is to say, correct sale consideration of the goods. Criterion under Section 14 of the Act is the price at which such or other goods are ordinarily sold or offered for sale in the course of international trade where the seller and buyer have no interest in the business of each other and the price is the sole consideration for sale or offer for sale.

19. To the same effect, Rule 11 of the Foreign Trade (Development and Regulation) Rules, 1993 provides. This Rule is to be read along with Section 11(1) of the Foreign Trade (Development & Regulation) Act, 1992, which inter alia provides that no export or import shall be made by any person except in accordance with the

provisions of this act, the rules and the orders made thereunder and the export and import policy for the time being in force. Rule 11 reads thus:-

"11. Declaration as to value and quality of imported goods.-On the importation into, or exportation out of, any customs ports of any goods, whether liable to duty or not, the owner of such goods shall in the bill of entry or the shipping bill or any other documents prescribed under the Customs Act, 1962 (52 of 1962), state the value, quality and description of such goods to the best of his knowledge and belief and in case of exportation of goods, certify that the quality and specification of the goods as stated in those documents are in accordance with the terms of the export contract entered into with the buyer or consignee in pursuance of which the goods are being exported and shall subscribe to a declaration of the truth of such statement at the foot of such bill of entry or shipping bill or any other documents."

20. Hence, in cases where the export value is not correctly stated, but there is intentional over-invoicing for some other purpose, that is to say, not mentioning true sale consideration of the goods, then it would amount to violation of the conditions for import / export of the goods. The purpose may be money- laundering or some other purpose, but it would certainly amount to illegal/ unauthorised money transaction. In any case, over-invoicing of the export goods would result in illegal/irregular transactions in foreign currency."

In view of the above, the impugned order passed by the CESTAT is clearly wrong in law and therefore the same has to be set aside.

Once, we find that goods were liable for confiscation

under sub-section (d) of Section 113 of the Act, and therefore penalty could be imposed under Section 114(I) of the said Act, next question that arises for consideration is as to whether on the facts of this case penalties were rightly imposed by the Commissioner. Though this aspect is not considered by the Tribunal it may not be necessary to refer the case back to the Tribunal for this particular purpose. Counsel on both sides agreed that the order of the Commissioner can be gone into to determine this aspect.

Coming to the alleged role of respondent no.1 Mr. G.P.Jaiswal, we find that the Commissioner has imposed the order of payment of penalty of Rs.25,000/- upon him only on the ground that the goods were cleared for export by his son Alok Jaiswal. That can hardly be the ground to fasten the liability or attribute abetment on the part of respondent no.1. Likewise, insofar as respondent no.2 Mr. Rakesh Mishra is concerned, the only allegation against him is that he had supervised the stuffing of the goods at ICD Varanasi and received the payment. Only on this allegation, it cannot be attributed that he became party to the over invoicing of the goods. Penalty in respect of these two respondents, therefore, has to be set aside.

As far as Mr. Rakesh Srivastava, respondent no.3 is concerned, he was working as Superintendent ICD. The allegation which has been established against him is that he

had a direct role in obtaining the report of M/s. Saraswati Plastics, New Delhi, and it is on that basis the exporter, namely, M/s. Yash Export fraudulently claimed high DEPB to their credit. It is recorded that without the aforesaid report it was not possible for M/s. Yash Export to fraudulently import high DEPB. Therefore, penalty against M/s. Yash Export is accordingly maintained. The appeals are disposed of in the aforesaid terms.

In C.A.No.4341/2004

As we have set aside the penalty imposed against respondent herein, as a consequence this appeal is also dismissed.

.....J.
(A.K.SIKRI)

.....J.
(ROHINTON FALI NARIMAN)

New Delhi;
Date: 27.3.2015.

ITEM NO.105

COURT NO.15

SECTION III

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 2620-2622/2004

COMMNR. OF CUSTOMS, LUCKNOW

Appellant(s)

VERSUS

G.P. JAISWAL & ORS.

Respondent(s)

(with office report)

WITH

C.A. No. 4341/2004

(With Office Report)

Date : 27/03/2015 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s) Mr. K.Radhakrishnan, Sr. Adv.
 Mr. Rupesh Kumar, Adv.
 Ms. Sunita Rani Singh, Adv.
 Mr. B. Krishna Prasad, Adv.

For Respondent(s) Mr. Asayush Agarwala, Adv.
 Mr. Aman Kalra, Adv.
 Mr. Pramod B. Agarwala, Adv.

 Mr. Anil Shrivastav, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The C.A.Nos. 2620-2622/2004 are disposed of and
C.A.No. 4341/2004 is dismissed in terms of the signed
order.

(SUMAN WADHWA)
AR-cum-PS

(SUMAN JAIN)
COURT MASTER

Signed order is placed on the file.