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IN THE HIGH COURT OF DELHI AT NEW DELHI

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PRONOUNCED ON: 27.4.2011**CUSAA No. 2/2011 & C.M. No. 1501/2011****CUSAA No. 3/2011 & C.M. No. 1504/2011****JAGMOHAN SINGH****. . . APPELLANT**

through : Mr. Navneet Panwar, counsel for the
appellant.

VERSUS**COMMISSIONER OF CENTRAL EXCISE (Adjudication)****. . . RESPONDENT**

through: Mr. Mukesh Anand with Mr. R.C.S.
Bhadoria and Mr. Shailesh Tiwari,
counsel for the respondent.

CORAM :-**HON'BLE MR. JUSTICE A.K. SIKRI****HON'BLE MR. JUSTICE M.L. MEHTA**

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

For orders, see CUSAA No.1 of 2011.

**A.K. SIKRI, J.****M.L. MEHTA, J.****APRIL 27, 2011/KA**

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CUSAA No. 1/2011 & C.M. No. 1499/2011

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1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
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A.K. SIKRI, J. (ORAL)

The appellant has preferred these appeals against the Final Order dated 15.3.2010 passed by the Central Excise and Service Tax Appellate Tribunal (CESTAT) whereby his appeal before the CESTAT

arising out of the Order-in-original dated 30.9.2005 has been dismissed. By that Order-in-original, the appellant was imposed with penalty of ₹ 20 lacs under Section 114 of the Customs Act. Before inflicting this penalty, a show-cause notice dated 30.12.2003 was issued to him in respect of such an export effected by M/s Unicorn Industries, G-22/IA, Rajouri Garden, New Delhi and certain acts of commission and omission were imputed against the appellant as well. The aforesaid penalty has been sustained by the impugned order.

2. In this appeal, the challenge to the order of the Tribunal is on the ground that though the Tribunal has specifically taken note of the statements made by the appellant in para 28 of the impugned order but the statements are not dealt with and no conclusions/findings are arrived at by the CESTAT qua the appellant. It is argued that by the impugned order, 17 appeals were decided and it appears that by inadvertence, omissions or otherwise, the case of the appellant had not been examined before dismissing his appeal.

3. In para 28 of the impugned order, following statements made by the appellant are noted:

“it was submitted on behalf of the Appellant Sri Jagmohan Singh that the statement recorded from him on 15.10.2001 being under force and coercion as well as physical torture was retracted on 16.10.2001, nothing implicates the appellant to charges. The Appellant being merely engaged in issuance of Airway Bills through M/s Bedi & Co., had booked space for

cargo through IATA had not abetted commitment of the offence alleged against Exporters. He was not a CHA and never acted as such. He was neither "G" card holder nor 'H' card holder and had no access to customs area. He was never involved in examination, processing of the documents of export or arranged for inspection of goods. He had not involved himself in the exports. He being neighbor of Sri Tejwant Singh cannot be implicated to charge without any basis of connivance and conspiracy with exporters to cause loss to revenue by any unreasonable claim of DEPB Credits. He was no way connected with procurement of goods by exporters. None of the statements recorded has implicated the appellant. None of the ingredients of Section 114 being present, the appellant is not liable to penalty."

It is clear from the above that;

- (i) His statement recorded on 15.10.2001 was under force and coercion as well as physical torture which was specifically retracted on 16.10.2001 and, therefore, there was nothing to implicate the appellant of the charges leveled against him.
- (ii) The appellant was merely engaged in issuance of airway bills through M/s Bedi & Co. and had booked space through cargo IATA and had not abetted the commitment of offence alleged against exporters.
- (iii) He was not a CHA and never acted as such.
- (iv) He was never involved in examination, processing of documents of export and never arranged for inspection of goods.
- (v) Sh. Tejwant Singh was his neighbor and merely on that basis, the appellant could not have been implicated in the case.
- (vi) He was no way concerned with the procurement of goods by exporters and none of the statements recorded had implicated the appellant.

On that basis, the statement of the appellant was that the ingredients of Section 114 of the Customs Act had not been satisfied in this case.

4. When we go through the impugned order, no doubt the same reveals that the aforesaid contentions of the appellant in one go and at one stage in a consolidated manner are not replied adverted to by the Tribunal. At the same time, when the order is read in its entity, it is clearly reflected that each and every statement of the appellant is duly dealt with at various stages.

5. In para 52 of the impugned order, the Tribunal has recorded that the premises of the appellant are situated in J-7/86 at Rajouri Garden, New Delhi. He is now the proprietor of M/s Lotus Cargo Service. More importantly, what is noted is that the statement of the appellant was recorded on 29.8.2001 as well and in this statement he had disclosed that he issued airway bills for the firms namely, M/s Zap Fashions, M/s Unicon Industries, M/s Bonita Industries, M/s Skyways Industries, M/s Oberoi Industries and M/s chabra Industries. In this very statement, he had also categorically accepted the fact that all these firms were controlled by Sh. Tejwant Singh who was the proprietor of M/s Unicon Industries and the appellant was the neighbor of Sh. Tejwant Singh. He had further admitted that not only he had issued airway bills, he was also looking after the customs examination of the Export Cargo relating to the aforesaid six firms. He even named one Custom Officer, namely, Inspector Sh. Rajeev Kumar Sharma who was witness to all the

examination of Cargo. In this statement, he further admitted an irregular/illegal manner in which the cargos were cleared. He specifically admitted that under the instructions of Sh. Tajwant Singh, he was writing the shipping bills to read as "Fixation of DBK in terms of Circular No.68/97-Cus dated 02.12.1997 subject to production of payment of CVD/CEX duty".

6. First contention of the appellant, as noted above was that he had retracted the statement dated 15.10.2001 on 16.10.2001. Nothing was argued by the appellant insofar as his aforesaid statement recorded on 29.8.2010 is concerned. Further, we find that this statement was not retracted either. In these circumstances, the argument of the appellant that he had retracted his statement dated 15.10.2001 on 16.10.2001 goes into nothing when we find that the Tribunal had not relied upon such statement on 15.10.2001 but had discussed the case of the appellant based on the statement recorded on 29.8.2001 which had never been retracted. Not only this, the Tribunal has also discussed other evidence which corroborated aforesaid statement of the appellant. Discussion to this effect can be found in para 57 of the impugned order where it is mentioned that Sh. Tejwant Singh in a statement had accepted and confirmed that the appellant was his neighbor who issued airway bills for cargo clearance.

7. Even Inspector Rajeev Kumar Sharma in his statement had corroborated that all the concerns were represented by Sh. Jagmohan Singh (appellant herein) for clearance and he used to do liaison work with customs for these firms for conducting market enquiry relating to microphones. Discussion in this behalf can be found in para 68 of the order of the Tribunal.

8. It is also mentioned that on 29.8.2001 after the statement was recorded, the appellant had stopped appearing. The Department had filed a complaint against him in the Court of learned ACMM, Patiala House but he did not respond to various summons issued against him and did not appear to give evidence. Therefore, non-bailable warrants were issued against him and he was declared proclaimed offender. However, the appellant has now started appearing in those proceedings.

9. On the basis of the aforesaid discussions, which specifically concern the appellant and other material evidence on record, the Tribunal recorded its finding in paras 75 & 76 in the following manner;

"75. Factual matrix depicted and relevant as well as material facts and evidence noticed hereinbefore having given rise to investigation followed by overseas enquiry proved questionable conduct of appellants. Extensive enquiry was done to ascertain various aspects including identify of the suppliers of Microphone and Fuel Pump Diaphragm. The persons involved in the export tendered evidence proving various circumstances leading to export of overvalued goods. Oral evidence tendered was well

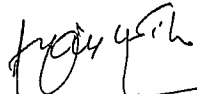
corroborated by directed and circumstantial evidence. Close association of various persons and their active involvement made the export successful endangering Revenue. Abetment and connivance of the conduits facilitated export causing loss to Revenue. Oral evidence gathered remained un rebutted. Intimate and close nexus of each other became patent from the modus operandi by the exporters with the conscious knowledge and deliberate intention to let export the overvalued goods.

76. Deceitful commitment surfaced with echoed evidence against the exporters and abettors. Ill designed racket came to light by Investigation. There was no fault found with investigation and process of investigation remained unchallenged except baseless pleas of violation of natural justice and flimsy plea of retraction of evidence when result of ill design brought the associates to the grave of offence committed under law and confessional were well corroborated. Acts of the appellants called for their trial in criminal court for which complaint was also filed by revenue. Nothing came out to the rescue of the appellants in absence of their bonafide. Series of acts of appellant and chain of evidence gathered by investigation proved ill intent and close association of exporters with the abettors. No circumstantial or direct evidence was led to show that the investigation was perverse. Consequence of follow up enquiry and substantial as well as material and relevant evidence were very well available on record speaking against the appellant to level charge against them through Show Cause Notice. Weighty and credential evidence available on record were sufficient enough to hold all acts of the appellants to be detrimental to the interest of Revenue. Adjudication does not appear to have suffered from any of the legal infirmities and cannot be faulted."

10. It is, thus, clear that the Tribunal has come to a specific finding that the appellant herein had issued airway bills; he had acted as an agent of the 5 concerns which were owned by Sh. Tejwant Singh; he played his role on specific instructions of Sh. Tejwant Singh; and he was dealing with the Customs Officers in respect of export of these

very goods. The Tribunal is thus categorical that the appellant was connected with the procurement of the goods by the exporters and there were other statements and sufficient material to implicate the appellant.

11. We, thus, find no merit in these appeals and the same are, accordingly, dismissed alongwith pending applications.


A.K. SIKRI, J.

APRIL 27, 2011
KA


M.L. MEHTA, J.