IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.732 of 2016

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Umeshwar Prasad, Proprietor of M/s Rahul Traders, S/o Late Kali Prasad, at + P.O. Bhelahi, PS Palanwa, District East Champaran (Bihar)

.... Appellant/s

Versus

The Commissioner of Customs, Patna, Govt. of India, 5th Floor, Central Revenue Building, Bir Chand Patel Path, Patna -800001

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Navendu Kumar
Mr. Kameshwar Mishra

For the Respondent/s : Mr. Satya Prakashs Tripathy, Sr.SC, Customs
Mr. Satya Vrat

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 09-04-2018

This is an appeal filed by the assessee under Section 130 of the Customs Act, 1962 calling in question tenability of an order dated 18.12.2015 passed by the Customs, Excise and Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata in the matter of imposing duty and penalty upon the appellant with regard to the goods in question which has been confiscated under Section 113 (c) of the Customs Act, 1962. Certain goods like paddy and rice of Indian origin were found by the Revenue authorities in the godown in Village –Bhelahi, PS Palanwa, District East Champaran situated very close to the Indo-Nepal border. The godown was rented out by the appellant for temporary storage of rice and paddy. In the raid it was found that the petitioner is indulging in permitting transportation of similar goods from Indo-Nepal border on tractors bearing Nepal registration number and various documents and materials showing indulgence of the petitioner in these kind of activities were seized. In the statement recorded of one Shri Vijay Kumar Bajaj at the time of enquiry it was stated that goods have been stored and were meant to be taken to Nepal as was being done in the past. The godowns in question were 100 meter away from each other and based on the statement made by various persons including Smt. Soni Jaiswal wife of Umeshwar Prasad Jaiswal who were owners of the second godown action was taken for seizure of the goods and the Tribunal on being satisfied that the goods were being stored for export out of India and was liable for confiscation under Section 113(c) of the Customs Act has dismissed the appeal of the appellant, by affirming the findings recorded by the assessing and first appellate authority.

Learned counsel for the appellant invited our attention to various judgments, particularly the judgment rendered by the Supreme Court in the case of ***State of Maharastra vs. Mohd Yaqub***

& Ors. [1980(03) LCX 0021] and a judgment of the CEGAT Eastern Bench, Kolkata in the case of ***Collector of Customs (Prev.)West Bengal vs. Kamala Ranjan Saha [1990(05) LCX 0087]*** to say that when there was no attempt to export the goods out of India to any other country and goods were lying in the godown, were not found in movement, a presumption cannot be drawn that the goods were stored for movement across the border. That apart, it was argued that the ingredients necessary for drawing an assumption under Section 113 of the Customs Act is not made out. Further it was submitted that in this case penalty has been imposed not only on the proprietor concern but also on the individual or owner of the establishment which is not permissible. It is said that only one set of penalty can be imposed either on the concern or the individual owner or proprietor of the concern or establishment and not on both.

Having heard learned counsel for the parties we find that based on the evidence and the material that has come on record and after taking note of the requirement of Section 113 of the Act, the learned Tribunal came to the conclusion that an attempt was made for removal of the goods across the border and, therefore, ingredients necessary for attracting Section 113 of the Act is made out. Apart from the approving the finding of the first appellate court, statement of witnesses recorded, namely, Vijay Kumar Bajaj and

Smt. Soni Jaiswal have been taken note of by the learned Tribunal and the Tribunal has recorded a finding that both these persons categorically admit that the seized goods were meant to be exported to Nepal. In paragraph 4.5 of the impugned order the learned Tribunal has referred to the documentary and oral evidence in this regard. The earlier similar act by the appellant in illegally transporting the goods and various other material are available to hold that an attempt was made to export the goods and, therefore, the provisions of Section 113 (c) of the Customs Act is attracted. The finding recorded by the learned Tribunal in our considered view is a reasonable finding based on due appreciation of evidence that has come on record and we find that no substantial question of law involved in the matter for making indulgence into the same.

Accordingly, the appeal so far as it pertains to challenge to the action for confiscation is concerned, does not call for any interference. So far as the imposition of penalty are concerned, penalty can be imposed upon only on one of the persons or the legal entity, i.e. either the concerned establishment or its owner and not on both. Imposition of penalty on both would amount to double punishment which is not permissible in law. To that extent the appeal has to be allowed as the law prohibits imposition of penalty for the same act of omission or commission on two individuals.

Accordingly, in the matter of imposition of penalty we direct the concerned Revenue authorities to recover penalty either from the concern or establishment or from the owner but not from both.

With the aforesaid, the appeal stands disposed of.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

mrl./-

AFR/NAFR	NAFR
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