

Customs, Excise and Gold Tribunal - Tamil Nadu

M. Madaiah vs Collector Of Central Excise on 18 June, 1992

Equivalent citations: 1992 (62) ELT 556 Tri Chennai

ORDER S. Kalyanam, Member (J)

1. This appeal is against the order of the Collector of Central Excise, Bangalore, dated 1.6-8-1988 levying a fine of Rs. 20,000/- in lieu of confiscation of a lorry bearing No. MYG 7341 under Section 110 of the Customs Act, 1962 read with Sections 12 & 34 of the Central Excises & Salt Act, 1944.

2. Shri Anand, the learned Chartered Accountant for the appellant submitted that fine has been levied on the ground that the lorry was transporting goods on 11-1-1988 under gate pass No. 401 dated 30-12-1987 and the goods had not been covered by a properly dated gate pass. It was urged that it is not disputed by the Department that the goods had suffered duty and apart from that the Tribunal also found in its order No. 702/1989 dated 25-10-1989 in the appeal filed by the manufacturers of the goods viz M/s Bells Controls Limited that the goods found in the lorry in question had suffered central excise duty and proper entries had been made in the statutory registers in the factory and the goods were kept in the manufacturing premises for the customers to come and inspect the quality of the goods before effecting clearance, and due to unforeseen circumstances there was a delay of 11 days on the part of the customers to come to the manufacturers' factory for making inspection and it is only in this context that the goods which had suffered duty and covered by gate pass were not removed and the goods were removed after a delay of 11 days. The learned Chartered Accountant submitted that the goods had admittedly suffered duty and the lorry owner was also exonerated by the adjudicating authority in the impugned order on the express finding that in the absence of any evidence to prove his complicity in the matter of committing offence, the mere fact that the gate pass did not bear the lorry No. would not make for any offence so far as the lorry owner is concerned". It was further submitted that the allegation in the show cause notice is under Section 110 of the Customs Act, 1962 read with Section 12 of the Central Excises & Salt Act, 1944 which may not have relevance at all either for confiscating the lorry or for permitting redemption of the same on payment of fine. The appellant therefore prayed for setting aside the order.

3. Heard Shri J.P. Gregory, the learned SDR.

4. We have considered the submissions made before us. We would like to refer to certain admitted facts. The goods found in the lorry had admittedly suffered central excise duty. Proper entries had been made in all the statutory registers maintained by the manufacturer in the premises. The goods were not removed on the date when entries had been made but removed later and the delay was on account of the customer inspecting the quality of the goods later. This position has been accepted by the Tribunal in their order referred to supra in appreciation of evidence on record. So far as the lorry owner is concerned, he had taken adequate precautions to see that the goods had suffered duty and the fact that the gate pass did not bear the lorry number or correct date on which duty had been paid may not by itself justify confiscation of the lorry in terms of Section 115 of the Customs Act, 1962 made applicable under Section 12 of the Central Excises & Salt Act, 1944 read with Notification 68/63 dated 4-5-1963. The proceedings being penal in nature, the appellant would be entitled to

benefit of doubt in the facts and circumstances of the case particularly when there is nothing on record to indicate either knowledge or mens rea in regard to the commission of any offence on the part of the appellant more so when the goods had been found to be admittedly duty paid. Even otherwise, the lapse at the manufacturer's end was technical in nature. Keeping all these factors in mind we set aside the impugned order and allow the appeal with consequential relief.