Assistant Collector of Cus. and C. Ex. Vs Metal Fabricks (India) Ltd.

Criminal Appeal No. 474-DBA of 1983

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 9, 1991

Acts Referred:
Customs Act, 1962 â€" Section 132#Customs and Central Excise Duties (Drawback) Rules, 1971 â€" Rule 14, 9#Penal Code, 1860 (IPC) â€" Section 420

Citation: (1992) 37 ECC 74 : (1992) 57 ELT 27

Hon'ble Judges: S.D. Bajaj, J; Harmohinder Kaur Sandhu, J

Bench: Division Bench

Advocate: H.S. Giani and Joginder Sharma, for the Appellant; V. Ram Swaraj and Anil Sharma, for the Respondent

Final Decision: Dismissed

Judgement

Harmohinder Kaur Sandhu, J.
Assistant Collector of Customs and Central Excise, Ludhiana filed a complaint against M/s. Metal Fabricks

(India) Ltd., G.T. Road, Miller Ganj, Ludhiana, and its Managing Director Shri Prem Nath for offences u/s 132 of the Customs Act, 1962 and u/s

420 of the Indian Penal Code, in the Court of Chief Judicial Magistrate, Ludhiana. The allegations made in the complaint were that M/s. Metal

Fabricks (India) Ltd., Ludhiana, manufactured oil cans and grease guns. Oil cans were an automobile auxiliary, and grease guns were used for

filing grease in heavy machines. The accused firm used the imported and indigenous excisable raw material. Both these manufactured items were

export items and as such the firm was entitled to claim drawback under the provisions of Customs and Central Excise Duties Export Drawback

General Rules. The Director of Drawbacks, Government of India, Ministry of Finance, Department of Revenue and Insurance, New Delhi fixed

the rates of drawbacks on basis of the data showing the quantities of various items of imported and of indigenous, used as raw material in the

manufacture of the export items. Such rates of drawbacks were revised from time to time by the Director of Drawbacks. On September 11,1971,

the Director of Drawbacks asked the accused firm for revising their rates of drawbacks on oil cans and the firm furnished data and statements

DBK I, II and III to the Director and the Collector, Central Excise, Chandigarh on December 25,1971. Data in respect of the grease guns for

fixation of initial drawback rates was also sent. All these statements were signed by Prem Nath accused. On the basis of the data of oil cans

furnished by the accused firm the rates of drawbacks so fixed were Rs. 799.77 per thousand oil cans on July 15, 1972. On the basis of this rate,

the firm filed claims for drawbacks and received the amount in respect of some of its claims from the Government. On subsequent verification, it

was found that false data was submitted by the firm regarding oil cans, wrongly showing the consumption of the raw material to be much higher

than actually consumed. The firm was entitled to claim drawback of duty at the rate of Rs. 290.18 per thousand cans instead of Rs. 799.77 per

thousand oil cans. The data furnished for drawback of grease guns was also found to be wrong, showing inflated figures of consumption of raw

material. In this way, the accused cheated the Government by putting in claims of drawbacks on the basis of higher rate which was got fixed

fraudulently and received payment in respect of some of such claims.

2. For the purpose of charge the complainant examined seven witnesses. After going through the evidence of these witnesses and hearing the

counsel for the parties, the learned Chief Judicial Magistrate, Ludhiana, found that the prosecution evidence on record even if assumed to be

correct and the same remained completely unrebutted could not by any stretch of imagination warrant the conviction of the accused. The accused

were, therefore, discharged vide order dated March 29, 1982. It is against this order that the present appeal has been filed.

3. We have heard Shri H.S. Giani, Advocate with Shri Joginder Sharma, Advocate, counsel for the appellants and Shri V. Ram Swaraj, Advocate

with Mr.Anil Sharma, Advocate, counsel for the respondents and have perused the record.

4. It was argued on behalf of the appellant that there was sufficient documentary evidence on record to prove that the respondents had submitted

false data regarding oil cans to claim the drawback which was not legally due to them and as such they had committed offences u/s 132 of the

Customs Act and u/s 420 of the Indian Penal Code. The contention of the learned counsel, however, does not hold good, in view of the evidence

brought on record. The main contention of the complainant was that the respondents furnished wrong statements on the basis of which rate of

drawback was wrongly assessed at a higher rate and the respondents received payment on the basis of that higher rate. There was, however, no

reliable and cogent evidence to show that any false statement was presented by the respondents with dishonest intention in order to get some

amount which was not actually due. In order to prove the charge u/s 420 of the Indian Penal Code, it was necessary for the complainant to show

that the respondents deceived the complainant by fraudulently or dishonestly inducing him to deliver any property to any person, or to make, alter

or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a

valuable security. By simply furnishing a statement for the assessment of the data of drawback, it cannot be said that the respondents had dishonest

intention especially when that statement was to be verified by the experts. PW 3 Bhagat Singh, Assistant Director admitted in his cross-

examination that on the submission of the statements by the manufacturer to the Director of Drawbacks, the verification is got done or carried out

by the local office of the Department of Customs and Central Excise to ascertain the correctness or otherwise of the data submitted by the

manufacturer. On receipt of verification report, the Directorate of Drawbacks examines the data and determines the rate of drawback. After

sanctioning the same an intimation is sent to the manufacturing unit as well as to the Assistant Collector, Customs and Central Excise concerned.

Technically experienced staff is available for the purpose of verification required to be carried out by the local Assistant Collector of Customs and

Central Excise. It is mentioned in the complaint itself that so far as the data relating to grease guns was concerned the same was found not correct

and claim of the respondents was rejected. In these circumstances, it cannot be said that any person was cheated or there was any intention on the

part of the respondents to fraudulently or dishonestly induce the complainant to assess higher rate of drawback.

5. As regards the offence u/s 132 of the Customs Act, it will be relevant to note the provisions of this section which are as under :-

Whosoever makes, signs or uses or causes to be made, signed or used, any declaration, statement or document in the transaction of any business

relating to the customs, knowing or having reason to believe that such declaration, statement or document is false in any material particular, shall be

punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

Before a person is found guilty under this section, there must be positive proof that the statement furnished by him is false. It is further to be shown

that the person making the statement knew or had reason to believe that the declaration or statement was false in material particulars. A reference

to the evidence placed on record will show that this fact is not proved that the data furnished by the respondents was false. PW 1 Shri T.R.

Sharma simply stated that specimen signatures of Prem Nath, respondent were taken in his presence by an officer of C.B.I. He also tried to prove

the signatures of Prem Nath on payment orders Exhibit PB/1-6 on the ground that he was acquainted with the signatures of Prem Nath as he had

been signing in his presence but when cross-examined he admitted that except when specimen signatures of Prem Nath were obtained by an

Officer he never had seen Prem Nath signing any document. The statement of this witness does not in any way prove that the data furnished by the

respondents was false. Statement of Subhash Chander Jain PW 2 was formal in nature and statement of Bhagat Singh PW 3 simply shows that a

manufacturer unit is required to furnish data in the prescribed drawback proforma which is verified by the technically experienced staff. PW 4 C.V.

Bhatt recalled payment orders Exhibit PB/1-6 and handed over the same to an Officer of the C.B.I. Statement of V.K. Khosla PW 5 related to

the statements Exhibit PD to PF vide which data was furnished for the fixation of rate of drawback on the grease guns and he submitted his report

Exhibit PG. As per case of the complainant no excess amount had been paid to the respondents by way of drawback on the manufacturing of

grease guns. Moreover this witness had not undergone any technical training and he simply counted and weighed the raw material.

6. To make out the case for charge, the complainant mainly relied on the statement of Shri R.S. Subaramaniya PW 6 who remained posted as

Senior Analyst in the office of the Director Drawback Government of India, Ministry of Finance, New Delhi. He visited the premises of the

respondents in February, 1973 in connection with the checking and verification as to whether the claim for drawbacks on the manufacture of oil

cans submitted by the respondents was correct or not. He found that the original statements submitted by the respondents were not correct.

According to him checking was made on the basis of some doubt which cropped up because a similar manufacturer from Bombay had submitted

the claim for different drawback from the one submitted by the respondents for the manufacture of the same item. This witness, however, did not

prove any report vide which he made observations that the data furnished by the respondents was not correct nor he gave any basis for the same

observations. His cross-examination revealed that he did not visit the premises of the manufacturer at Bombay and so he was unable to say if the

specifications, size, weight, model design and the process of manufacture of the respondents and the other party was one and the same or there

was any variation. He admitted that the respondent factory was carrying on rigid inspection at all the stages of manufacture. So it might have shown

some rejections during the stage of rigid inspection. He also found that the process of manufacture was the same as has been indicated in the claim

for drawback. This witness admittedly was not a technical man i.e. he was not an Engineer nor he was authorised to carry on the necessary

checking and verification. Rule 9 of the Customs and Central Excise Duties Drawback Rules provided that only an Officer of the Central

Government specially authorised by an Assistant Collector of Customs or of Central Excise shall have access to the premises in which goods are

manufactured so as to verify by inspection the process and the material or components used for the manufacture of such goods or otherwise the

entitlement of the goods for drawbacks or for a particular amount or rate of drawbacks under these rules. According to the rules, only a technically

trained officer can go into the correctness or otherwise of the data submitted by the manufacturer. If any excess payment had been made to the

respondents erroneously then the respondents would be asked for its repayment under Rule 14 but no such notice was given which will further

show that the data furnished was not false. All the evidence that the complainant wanted to lead, had been brought on record. The rest of the

witnesses were given up as being unnecessary or having been won over by the respondents. In view of the evidence discussed above and also

appraised by the learned trial Court, it was rightly found that the evidence brought on record did not show that the statement submitted by the

respondents to claim drawback on oil cans was wrong or false and came within the mischief of Section 132 of the Customs Act. The findings of

the learned trial Court are, therefore, affirmed.

7. As a result of the above discussion, we do not find any force in this appeal and consequently dismiss the same.