

1998-(XC2)-GJX-3593-TRIB

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Lalchand H. Kumavat & Ors.

Vs.

Cce, Mumbai-ii.

Court :

Tribunal

Decided On :

November 05, 1998

Equivalent Citation(s) :

1999-(080)-ECR-0757-TRIB

Judge(s) :

J N Srinivasa Murthy, K S Venkataramani

Judgment :

LALCHAND H. KUMAVAT & ORS. v. CCE, MUMBAI-II.

Appeal No. C/227 to 230/89-Bom. Order No. C-I-4229-4232/98/WZB, decided on November 5, 1998.

IN THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL WEST REGIONAL BENCH

Per Shri J. N. Srinivasa Murthy, Member (J) - The appeals are filed by the parties against the impugned order captioned above, praying for setting aside the same and also the personal penalty imposed thereunder. 1.2. The facts of the case are that on the basis of the pre-recorded information on 28.6.1987 at about 10.00 hrs, the Central Excise Officers, Mumbai-II Collectorate, intercepted a truck no. MTV 2168 on Agra Road, near Petrol Pump near ST bus stand in Bhiwandi in Thane District. It was found loaded with gunny wrapped packages, 91 in numbers, found to contain one carton each, with 12 cones with 100% polyester texturised yarn, made in Korea, wounded on each cone. The occupants in truck could not produce any documents covering the legal import acquisition or the transportation of the same. It was seized under the panchnama under the reasonable belief that they

were smuggled into India and liable for confiscation under the Customs Act, so also the Truck no. MTV 2168 used for the transportation of the same. The driver Shri Ashok Vittal Shendge and the four other occupants of the said truck were taken up for enquiries.

2. The officers rushed to the godown of the appellant M/s. Archana Transport Agency (ATA) at Muslim orphanage building, Kaneri, Bhiwandi, which was found locked. The appellant Lalchand and Kanmal of the above firm and Manoharlal were brought from the office of the above firm at Kaneri and got open the above premises, and recovered 32 packages containing 64 cartons containing cones with 100% polyester texturised yarn wound on the cones. They were also seized as none of the above said three persons, nor anyone else, could produce any documents to cover the legal import or acquisition of the said yarn weighing 1536 kg. valued at Rs. 3,84,000/- of foreign origin. The other persons were also apprehended for enquiry.

3. Then the officers surrounded one gala of the shop on the ground floor in the left side of the entrance passage towards the staircase in the building No. 267 of Telepada, Kaneri, Bhiwandi which was also locked. Shri Arif Mohd. Hanif Ansari, the appellant who was controlling and using the said gala produced the keys, and on opening the said gala 111 packages containing one carton each of eight packages containing loose cones and each of the packages containing 12 cones with 100% polyester texturised yarn, made in Korea, wound thereon, were recovered. He could not produce any documents to recover the legal import and acquisition and storage. On 28.8.1987, they were seized under the panchnama weighing 4284 kgs. valued at Rs. 10,71,000/- of foreign origin. He was apprehended for enquiry. 4. The officers also seized huge quantity of Kutty (Sehgar) and Tamarind from one godown of the appellant firm situated at N. K. Warehousing Agency compound, Bhiwandi under the belief that it was used for concealing the contraband yarn packages during the transportation from Siliguri to Bhiwandi.

5. Truck No. MHT 9739 was also traced and seized under the belief that it was used for transportation of the above said packages, along with 36 cartons of indigenous yarn found therein, which was also used for concealing the seized goods. The above material were examined thoroughly in the presence of the panch witnesses and the appellants, drivers and a detailed inventory was also made and 242 packages containing yarn of Korea origin and 36 cartons containing indigenous yarn were seized on 3.7.1987. In all, properties worth Rs. 29,78,150/- were seized and 16 persons were apprehended for inquiries under the Customs Act.

6. From the above it is shown that the appellant Kanmal, Lalchand, Manoharlal, Arif Mohd., were concerned with the above goods, and utilized, and controlled the premises from where they were stored, and meant for the consumption of the contraband yarn by them. It also discloses that Ahmed

Wahid Patel had driven MHT 9739. The seized yarn contained the marks of foreign origin. The statements of the appellant, drivers, the occupants of the truck and the employees of M/s. Archana Transport Agency, Shri Bhagwat Chanwasappa Patil, Ashok Anappa Malshetty and Shankarlal Chogaji Reggar were recorded. The appellant and the drivers were arrested on 30.6.1987 after conducting the enquiries, which revealed the part played by them in smuggling the yarn in India and sending it to Bhiwandi. Assistance in smuggling and disposing of the same by Manoharlal Bhatia, and the unloading & storing of the said yarn in the godown, and gala of the appellant, and Lalchand arranging for the transportation of the same, and Shri Roshanlal Kapoor and Jaiswal were the main persons behind the smuggling of the goods between India and Nepal border, and were behind in sending them to Bhiwandi, utilizing the services of Manoharlal and others for disposal. Pradeep Agrawal of Mumbai along with M. B. Bhatia are also the person responsible for the said disposal of the smuggled goods to Bhiwandi.

7. After the completion of the enquiry, the Show-cause Notice was issued by way of memorandum on 24.12.1987 under section 124 of the Customs Act against the appellant and drivers and Tarachand Damodar Singh, Roshanlal Jaiswal and Pradeep Agrawal by the Asst. Collector of Customs (P), Mumbai calling upon them to show cause as to why the seized contraband yarn and indigenous polyester yarn and two trucks should not be confiscated under section 111(d) and/or 111(p), 115(2), 119 and penalty should not be imposed on them under section 112 of the Customs Act. The appellant and Tarachand D. Singh and the firm M/s. ATA were called upon to produce truck MTV 2168, MHT 9739 which were released under the B-11 bond dated 17.11.1987 with the Bank Guarantee as security. The importation of 100% polyester texturised yarn (Synthetic yarn) without payment of valid import control licence under no. 17/55 issued on 17.12.1955 by the Ministry of Commerce and Industry in the Government of India as prohibited under clause 3 of Section 3(2) and 4A of the Import Control Order and Import and Export Control Act, 1947 and deemed prohibition under Section 11 of the Customs Act. The above goods is specified as a notified goods under the notification no. 12-CUF/9 and 205/84 dated 27.4.1984 respectively, issued under 11B of Customs Act 1962, by the Ministry of Finance (Department of Revenue and Insurance), and every person who acquires, possesses, stores such notified goods after the notified date, any notified goods shall before us acquisition, possession, storage etc. deliver to the proper officer of the intimation containing therein particulars of the place or places where such goods are proposed to be kept or stored and shall comply with the provisions contained in Chapter IVA of the Customs Act. Under section 123 of the Customs Act, the burden is on the person from whose possession the above goods are recovered to show that they are not smuggled goods. The above persons are concerned in illegal importing and/or clearing or possessing, storing, transporting the seized goods contravening the above laws rendering them liable for penalty under section 112 of the Customs Act. On the receipt of the reply, and after giving an opportunity for cross-examination, and after hearing the noticees through their counsel, the Addl. Collector of Central

Excise, Mumbai-III has passed the impugned order on 6.2.1989 confiscating absolutely the polyester texturised yarns and tamarind, and conditionally confiscating the trucks on the redemption fine of Rs. 75,000/- each, and imposing a penalty ranging from Rs. 50,000/- to Rs. 3 lakhs on the appellant and Roshan Jaiswal and P. Agrawal. Hence this appeal.

8. Shri V. N. Kantawala, learned advocate for the appellants has submitted that L. H. Kumavat is the partner of M/s. Archana Transport Agency, and Polyester yarn of Korea origin are seized from the transporters godown. As it was transported to the godown and was being unloaded, and hence the said goods along with the two trucks under which they were transported, are seized. They were confiscated and personal penalty are imposed on the appellants. The appellants are not concerned with the goods. Their role is only that of a transporter. Mere possession of the goods is not sufficient to prove the charge. It is for the department to prove illicit importation, and mere fact of foreign origin of goods is not sufficient, as per AIR 1965 Calcutta page 527. The appellants are not concerned with the goods. The personal penalty applies only to the person concerned with the importation, and not to a person found in possession thereof, and hence the appellant cannot be penalised, as per AIR 1966 Supreme Court page 955 = 1984 ECR 518 (SC) = ECR C Cus. 477 SC. Mere custody of the goods is not liable for confiscation or penalty. Knowledge that the goods were illegally imported is material, as per 1987 (32) ELT page 385 (AP). The statement of the appellants are obtained under duress, and the appellant have retracted the same, and hence not admissible being not voluntary. So also the statement of truck drivers. The statements point out to Bhatia that the transporters were not responsible for import, but were only concerned with the transport. The appellant had no knowledge and there was no mens rea, which has to be established, as per 1990 (47) ELT 157 (SC) and 1990 (50) ELT 250 = 1990 (29) ECR 456 (T). The confiscation of the ship is not proper if master and owner had no knowledge of the goods found therein, as per 1998 (sic) ECR 152 (Mumbai). The main persons could not be connected by the department as per para 4 of the impugned order. The yarn was transported on the say of Bhatia that the same was purchased in Customs as per the reply to the Show-Cause Notice. The personal penalty on the appellants are required to be set aside.

9. Shri K. L. Ramteke, the Id. DR has submitted in his arguments that the statement in the case are reliable as there is corroboration and as per para 21C in page 26 of the impugned order, goods were concealed with tamarind and Kutty and stored in the appellant M/s. ATA's godown. Para 24C shows the role of the appellants. If they were not concerned, there was no reason for them to respond to the summon. Under section 112 of the Customs Act, mens rea is not an ingredient. The appellant had the knowledge about the nature of the yarn. Even the retracted statement has evidentiary value if it is voluntary as per 1998 (99) ELT 658 = 1998 (73) ECR 703 (T). Personal penalty imposed on the appellants are just and proper.

10. The point for consideration is whether there are sufficient and satisfactory grounds to set aside the impugned order. Our finding are in the affirmative regarding the reduction of personal penalty against the appellants and negative regarding the rest.

11. Perused the memorandum issued under section 124 of Customs Act dated 24.12.1987, and reply dated 5.2.1988 of M/s. ATA, and the order in original, and appeal memorandum, and the retraction before the Judicial Magistrate class I, Bhiwandi dated 23.7.1987 of the appellants Kanmal and Lalchand. Also perused the decision in AIR 1965 Calcutta 527 in the case of Maniklal Sen and others v. Addl. Collector of Customs & Another, regarding the burden of proof on the department to prove illicit importation before confiscation and the proof of knowledge of the illicit importation of the accused for imposing penalty, under section 167(8) and 178A of the Sea Custom Act, 1878 when the goods are not covered under section 101 to 104 of the Evidence Act. The Sea Customs Act deals with offences which carry punishment of confiscation or fine. The offences and the adjudication thereof, including conviction and punishment, are all of penal nature. Such proceedings are, therefore, in the nature of criminal proceedings. The general rule relating to all criminal proceedings is that a criminal charge has to be established by prosecution to the hilt, and the burden of proof is never on the accused. This fundamental principle of the burden of proof in criminal proceedings can only be varied by a statutory enactment. Under the Sea Customs Act, it has been varied by the introduction of Section 178A. But where S. 178A is not applicable the burden of proof lies on the Customs authorities to prove that the goods have been illegally imported and are smuggled goods. The mere fact that the goods are of foreign mark is not sufficient to discharge the onus or shift the same upon the accused. If the Customs Authorities discharge the initial onus of showing that the goods have been illegally imported, they can confiscate the goods. For purpose of penalty they would have to go further and show that the accused was in possession of the goods with the knowledge that the goods were smuggled. AIR 1961 SC 264 and AIR 1962 SC 496. Foll; AIR 1961 Mad 368 and AIR 1965 Cal 507. Rel. on.

12. AIR 1966 S.C. 955 = 1984 ECR 578 (SC) = ECR C Cus. 477 SC in the case of Sachidanand Banerjee v. Asst. Collr. of Customs, Calcutta and others. Under section 167(8) of Sea Custom Act, it is held that the essential condition for conviction thereunder, when the goods are found in the possession of the third party which are found to be smuggled, he can be convicted as a necessary intention to evade the prohibition or defraud the government of the duty payable is inferable. The section 167(8) is of wider amplitude and it applies not only to persons who may have been actually concerned in some way or the other with the smuggling, but also inter alia the persons who may have come into the possession of the goods even after the smuggling of the goods was over. So long as the prohibition or restriction remains, or where the duty has not been paid even as third person coming into the possession of such goods, would have intention either to evade the prohibition or retraction or defraud

the duty payable therein. (Paras 15 & 17)

13. 1982 ECR 152 in the case of Shipping Corporation of Saudi Arabia under sections 112 and 115(2) of the Customs Act it is held that confiscation of the vessel not maintainable when it is held that the owner had no knowledge of the smuggled goods carried therein.

14. 1988 (34) ELT 382 in the case of Dinesh Ishwarlal Patel v. Collr. of Customs, Mumbai under Section 112 of the Customs Act, it is held that mere custody of foreign make without knowledge or reason to believe that they are smuggled goods liable to confiscation is not sufficient to impose penalty. (vide para 8.)

15. 1990 (50) ELT 250 = 1990 (29) ECR 456 (T) in the case of Jogender Prasad Yadav v. Collr. of Customs under section 111(d), 112 and 115(2) of the Customs Act it is held that the charges should be clear and unambiguous and contradiction in the statement regarding the ownership of tractor used in the transport of contraband goods before the Magistrate and the hearing not sufficient to prove that the appellant had knowledge of the offence, the imposition of penalty is not sustainable.

16. 1998 (99) ELT 649 = 1997 (71) ECR 412 (T) in the case of Alfa Laval (I) Ltd. v. Collector of Cen. Ex., Pune deals with the valuation under Central Excise and it does not deal with the confiscation or the personal penalty under Customs Act. So also the other rulings referred in the contention of the parties do not pertain to the subject involved in this case. In the light of the general principle laid down in the above decisions, the present case is considered in the below paragraphs.

17. From the Show-cause Notice i.e. Memorandum dated 24.12.1987 it is seen that the truck no. MTV 2168 was intercepted on the basis of the pre-recorded information which was found loaded with the gunny wrapped packages of 91 in number, containing polyester texturised yarn, made in Korea and Shri Ashok Mittal the driver of the said truck and other occupants, four in number, could not produce any document covering the legal import acquisition of transportation of the 91 small packages of the yarn. It resulted in the seizure of the truck and the packages of yarn. Search of the godown of M/s. ATA by the officers after getting the appellants from their office, found 32 packages containing 64 cartons, which were containing 100% polyester texturised yarn wound on the cones therein. The appellants namely Lalchand, Kanmal of M/s. ATA and Manoharlal Bhatia of Indore, present at the time, could not produce any supporting documents for the acquisition, storage or transportation of the said yarn. The search of another premises of gala on the ground floor in the left side of the entrance passage towards the staircase in Bldg. 267, Bhiwandi, after getting the appellant Arif Mohd. who was in control of the said gala and on opening the same from the key produced by him, it was found with 111 packages containing 1 carton each and 8 packages containing loose cones. In the packages, 12

cones were found wound with 100% polyester texturised yarn of Korea make. He could not produce any document to cover the legal import acquisition, transport or storage of the same. In addition to this, huge quantity of Kutty and Tamarind from one more godown of M/s. ATA were seized on the belief that it was used for contraband during the transport from Siliguri to Bhiwandi. Truck no. MHT 9739 was also traced and seized, which contained 36 cartons of indigenous yarn as they were used to conceal the above polyester yarn of Korea origin. As per the memorandum the charges levied against the appellants were of smuggling and transportation and possession of the foreign marked 100% polyester texturised yarn wounded on cones packed in cartons. Evidently, the statements recorded under section 108 of the Customs Act contains the fact of having involved in smuggling transporting and storage.

18. The reply of the appellant Kanmal and Lalchand dated 5.2.1988, who are the partners of M/s. ATA, shows the Transport business from 1972 and 1983 and MHT 9739 are taken on hire by them. From their two trucks and one tempo for the business of transport, they are flourishing in their business and paying income tax. It is an unfortunate episode of one partner, which has resulted in the issue of Show-cause Notice to them. That partner Lalchand in his individual capacity, has transported the seized goods for his personal benefit of getting the Commissioner charges and the company is no way concerned with it, which has not evaded any octroi duty or tax, as evident from the records of the company. The godown was misused only by him and not by the company. The company is no way responsible for the acquisition or the possession, storing or transporting the seized goods as the record of the company did not bear any entries in that record. They have no interest in 242 packages containing polyester yarn. Regarding the two trucks seized, it is said that they belong to different owners and the drivers of the two trucks were not aware of the contents of the luggage. So also the owner and the drivers of the said trucks and M/s. ATA, have requested for the release of the truck on nominal fine. Regarding seizure of 36 cartons of indigenous yarn, they have attacked that the panchnama did not mention how they were used to conceal the smuggled goods. Even the statements recorded are silent in that regard. 36 cartons were loaded from three different clearing agency at about 10.30 a.m. and sought for the release of the goods on 13.7.1987 by producing copy of the delivery challan which were not taken on record by them. Again on 9.11.1987, repeated request was made in that regard. The parties to whom the said cartons were to be delivered have purchased them and have requested that Asst. Commissioner of Central (P) for the release of the same. No action in that regard has been taken. 12 cartons each belonging to M/s. Gopal Textiles, Dombivli, Ambika Textiles, Nandi Synthetics, they are not issued with any Show-cause Notice. The business of the appellant M/s. ATA is adversely affected by the seizure. So in view of this ground taken by the appellant, apart from the statements, the reply to the memorandum, the transportation and possession of the Korea make 100% polyester Textile Yarn by M/s. ATA, Kanmal and Lalchand is admitted.

19. It has to be seen whether this possession of the contraband is with the knowledge of the nature of the goods or not. As contended by the appellant, mere possession is not sufficient. The importation and the transportation and the storage of the said goods by the appellants with the full knowledge has to be established. The statement of M. B. Bhatia implicates Arif Mohd., the appellant as his agent in disposing of polyester texturised yarn smuggled from Nepal border via Siliguri at Bhiwandi and collecting sale proceeds from them. He is acting as the agent of one Roshan Kapoor at Siliguri. His statement shows the fact that on the night of 26.6.1987 seized 242 packages of contraband yarn were received in two trucks at the godown of M/s. ATA at Purna village, out of which 119 packages were delivered to the appellant Arif Mohd. and 32 packages were kept in the godown premises of M/s. ATA at Kaneri. He has also implicated the appellant Lalchand of M/s. ATA by saying that he had helped him in transportation and delivery of said smuggled yarn to the parties in Bhiwandi, and his brother Kanmal was also aware of the smuggled nature of the yarn, and the illegal transportation. This statement of M. B. Bhatia is recorded under section 108 of the Customs Act, which is substantial evidence in the case. The panchnama drawn in this case as narrated in the impugned order, strengthens the statement of Shri M. B. Bhatia. Apart from that, the appellant Lalchand has also given his statement on 28.6.1987 and 30.6.1987 under section 108 of the Customs Act, admitting the arrangement of the storage of the contraband yarn in the godown premises of M/s. ATA of which he is a partner, he has also admitted the arrangement of transportation locally through the trucks MTV 2138 and 9739 of the said contraband yarn. The said trucks are owned and controlled by M/s. ATA. He has supported the statement of M. B. Bhatia that he had arranged for the entry of the said yarn cartons in Bhiwandi through octroi barrier and the receipt of 242 packages in their godown at Purna village. He has further added that he was to get Rs. 10,000/- as monetary consideration from Bhatia for the services rendered in respect of 242 packages of yarn. Earlier, he had arranged once in a similar manner and had taken Rs. 4,000/- from Bhatia. He has further added that his brother Kanmal was aware of this transaction. Another appellant Kanmal under the similar statement on the same date, has supported the statement of Lalchand, both the brothers are the partner of M/s. ATA. According to him, M. B. Bhatia had approached both brothers to transport locally of imported polyester texturised yarn, and on 26.6.1987 delivered the same in two trucks at their godown in Purna village, and they got cleared through the octroi and brought the consignment of imported goods at Kaneri. He has also supported the statement of Bhatia and Lalchand about the transportation of 119 packages of imported yarn to the godown of the appellant Arif Mohd. through the truck no. MHT 9739. That packages of similar yarn were stored in their Kaneri godown and he was well aware of the smuggled nature of the goods. The drivers Ashok, Patel, in the statement under section 108 of the Customs Act have admitted driving the truck no. MTV 2168 carrying 91 packages of seized yarn as per instruction of his employer, which was to be delivered to some place at Bhiwandi, and one person was there on the scooter ahead of the truck guiding them, when it was intercepted, and the driving of the truck no. 9739 carrying 242 packages of the seized yarn as per instruction of the employer Lalchand from the godown of Purna

village to another godown at Kaneri of M/s. ATA, and unloading 123 packages in that Kaneri godown which were of foreign origin, and 119 packages were delivered at the godown of the appellant Arif Mohd. Occupants of the truck Sunny Yadav, Chandrakant have supported the statement of the drivers, the employees of M/s. ATA have also supported the above version. According to Shankarlal Jagga the seized yarn in carton received in two trucks were unloaded in purna godown in the next day night time. They were loaded in truck no. MHT 9739 of their company and gunny bags of Kutty were kept above the said cartons. When the trucks came and while returning, some kutty bags were taken back in the truck, and some remained in the godown which was seized.

20. From the above material and the panchnama referred it is clear that the appellants were concerned with the possession and storage of the contraband yarn with full knowledge, which is notified goods under the chapter 4A of the Customs Act. As contended by the learned DR, the polyester texturised yarn is mentioned in the notification no. 204/84 dated 20.7.1984 issued under the Customs Act and under section 123 of the Customs Act, it is for the persons from whose possession they were seized, to show that the seized goods were not smuggled one. The panchnama discloses the foreign mark on the seized yarn. Apart from that, the statement referred to above further strengthens the case of the department about the knowledge of the appellants that the seized yarn was a smuggled one. The Show-cause Notice issued called upon the appellants to produce the seized material before the adjudicating authority which were released to them provisionally on B-11 bond for Rs. 4 lakhs with the security in the form of Bank guarantee of Rs. 1,25,000/-.

21. The appellants have contended about the retraction made by them in this case, which is also exhaustively considered by the adjudicating authority. The appellant Kanmal and Lalchand have retracted their statement on 23.7.1987 before the Magistrate, nearly three weeks after the production before the Magistrate, after they were released on bail, alleging wrongful confinement, illegal custody for three days prior to the production, and extortion in writing from them under threat, force and coercion by using third degree methods, denying the voluntary nature of the statement. They want their retraction to be treated as voluntary statement under section 108 of the Customs Act. The effect of the retraction on the statement recorded under section 108 of the Customs Act has to be considered. This retraction is not supported by any material. It was not immediately made before the Magistrate when they were produced. No reason is assigned for the delay of three weeks. There is no material to show that when they were produced before the Magistrate there was a complaint of these things alleged in the retraction statement. So under these circumstances, the retraction loses its value, to nullify the substantial evidence under section 108 of the Customs Act. If really they were serious they would have acted as expected of in the normal course of conduct. These observations equally apply to the case of another appellant Arif Mohd. who has also stated on 23.7.1987. The drivers of the truck belonging to M/s. ATA have also retracted on the same day in writing. They clearly show that it was

an arranged retraction after long lapse of time. Even M. B. Bhatia has retracted the statement by his application dated 15.7.1987, which was filed on 23.7.1987 before the court making similar allegation. It is apparent that these retractions are purely an after-thought on advice.

22. The adjudicating authority in the course of his order has considered the reply to the Show Cause Notice, and the submissions made by the persons involved, and the cross-examination of Karanjikar, the Superintendent who has investigated the case, and after hearing the counsel representing the parties, has dealt with each and every contention raised by them in paras 15 to 24 by formulating the charges in para 16, and dealing with each and every point thereunder namely the nature of the goods seized, and the claim made by the parties, and also the jurisdiction of the proper officers who have conducted the investigation, and the retractions made by the appellants, and its effect on the statement under section 108 of the Customs Act. The defence of all the appellants and other parties, were also considered in detail in para

21 and has come to the just and proper conclusion. In para 23, he has upheld the claim of the parties regarding the 36 cartons of indigenous yarn seized from the truck no. MHT 9739 on 28.6.1987 and ordered for the release of the same to M/s. ATA. So from this it is clear that the impugned order has considered the case of the appellants and the other concerned persons in the proceedings dispassionately and come to the just decision. In para 24C and the grounds of the appellants are considered. In para 24H he has held that M/s. ATA not being a legal entity has not imposed any penalty thereon. So under these circumstances, the grounds urged in the appeal memorandum, and the contention raised in the course of the argument is not convincing to set aside the impugned order, and come to a different conclusion. The facts and circumstances of the case, and the panchnama recorded and the supporting statements under section 108 of the Customs Act acts as a substantive evidence, and the afterthought retractions filed on a single day by all the concerned persons goes against the case of the appellants as discussed above. So under these circumstances, there are no sufficient and satisfactory grounds to set aside the impugned order against the appellant. But, looking to the facts and circumstances of the case, we feel the ends of justice will be met by reducing the penalty imposed on the appellant Lalchand, Kanmal and Arif Mohd. from Rs. 50,000/- each to Rs. 20,000/- each. The point raised is answered accordingly. Hence we pass the following order

ORDER

23. For the reasons indicated above, the appeals of Lalchand, Kanmal and Arif Mohd. are allowed in part and the penalty imposed in the impugned order is reduced from Rs. 50,000/- each to Rs. 20,000/- each. The appeal of M/s. ATA is rejected.

Backward Reference :

1988-(XC2)-GJX-0753-TRIB Dinesh Ishwarlal Patel V. Collector Of Customs Bombay.
1990-(XC2)-GJX-0172-TRIB Jogendra Prasad Yadav V. Collector Of Customs.
1989-(XC2)-GJX-0518-TRIB Pradyumna Steel Ltd. V. Collector Of C. Ex.
1997-(XC2)-GJX-1166-TRIB Alfa-laval (India) Ltd. V. Cce, Pune.
1997-(XC2)-GJX-1265-TRIB Hanuman Prasad V. Cc, Jaipur.

Forward Reference :

2003-(XC2)-GJX-2761-TRIB Commissioner Of Customs (Import) Mumbai V. Gangaram P. Kerkar.

Acts :

EXCISE NOTIFICATION

Notification No. 204/84

