Wooltex Associates Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-07-1997

Reported in : (1998)(99)ELT245Tri(Mum.)bai

Appellant : Wooltex Associates

Respondent : Commissioner of Customs

Judgement :
1. On the basis of information that various consignments imported by a particular vessel, declared to be wool waste in the Bills of Lading and the Import General Manifest, actually contained substantial portion of synthetic waste, the officers examining these consignments. Among these was the consignment of 21 bales consigned to the appellant. Examination of this consignment, showed that 13 bales out of 21 contained synthetic fabrics and 8 bales contained wool waste. Notice was therefore issued proposing confiscation of the consignment and imposition of penalty.

After considering the cause shown and hearing the appellant, the Collector has passed orders confiscating the goods and imposing a penalty on the appellant. This appeal is against imposition of penalty.

2. The advocate for the appellant contends that appellant had ordered wool waste and not any synthetic material. There was no allegation or conspiracy between the appellant and the supplier in the UK; the appellant had not filed a bill of entry for the goods and therefore had not misdeclared the same. In the alternative, he

request leniency on the ground that the appellant had acted in good faith.

3. The Departmental Representative contends that it was the appellant who caused the import of the goods and that by this act, the appellant became liable to penalty. He contends that, Section 112 does not prescribe the existence of mens rea or mala fide before penalty could be imposed. He points out that the intelligence with the department showed that the appellant, along with other consignees was attempting to influence the agent of the vessel to amend the manifest so as to avoid the charge of misdeclaration and that the appellant did not appear in response to the summons before the Customs. This indicated the existence of the guilty mind.

4. It is not in dispute that, subsequent to the shipment, the appellant had taken up the matter with the supplier and entered into correspondence through its advocate. As a result of this correspondence, which went on between February, 1986 and February, 1987, the appellant was reimbursed Pound 2,413 and promised a further sum of Pound 3,000 by the supplier. Thus, the appellant was reimbursed almost 80% of the total sale proceeds. The correspondence indicates that the appellant's advocate's advice to settle the matter with the supplier on this basis taking into account the fact that legal proceedings result in court fees and other heavy cost. The fact that the appellant recived a very high proportionate of the sale price from the suppliers supports the claim that it did not deliberately entered into conspiracy to receive synthetic fabrics in the guide of wool waste. There is no material to show that the entire correspondence between the apppellant and the supplier much of which routed through its advocate, was deliberately contrived or fabricated to provide a defence for it. It is also to be noted that the order was placed not directly but through M/s. Dipali Wool Impex, the indenting agents in India for the suppliers. The Enforcement Directorate which had launched proceedings against the appellant following the Customs action itself dropped the proceedings for the reason that the appellant had received pounds 5,413. In the order impugned in the appeal, the Collector has justified imposition of penalty, on the appellant by saying that 24 other persons had imported consignment in the same vessel and from the same country, which were declared to be wool and found to be predominantly synthetic waste and therefore, not accepted the claim of

wrong shipment. It did not establish that these 24 consignments were in fact misdeclared. The order of the Collector does not indicate details.

Even assuming this to be the case, however, we fail to see how this fact by itself would show that the appellant had conspired to import synthetic goods and that the claim of wrong shipment was subsequently fabricated. If such a claim were to be accepted it must be shown that the appellant had acted in concert with other importers. There is no material to show this. Nor is there any material to show that the appellant was in conspiracy with the supplier. We do not find it possible to agree that mere fact that there were a number of consignments misdeclared on the same craft would by itself justify imposition of penalty on the appellant. This conclusion is further strengthened by the fact of reimbursement to the appellant of much of the purchase price.

5. On the basis of these facts, we do not think that any penalty can be imposable on the appellant. The contention of the Departmental Representative that penalty is imposable, in the absence of mens rea is answered by the judgment of the Supreme Court in the Hindustan Steel v.State of Orissa -1978 (2) E.L.T. 159 (S.C.). Section 112 of the Customs Act does not provide for a mandatory penalty, and on the facts of this case, the discretion to impose or not to impose a penalty should be exercised in favour of the appellant. The fact that the appellant did not respond to summons does not by itself lead to the conclusion that the appellant had a guilty mind.