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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-03-1997

Reported in : (1998)(98)ELT675TriDel

Appellant : Commr. of C. Ex.

Respondent : Rainbow Ink and Varnish Mfg. Co.

Advocate for Def. : Shri. A.L. Malhotra

Judgement :

1. This is a Departmental appeal against the Order-in-Appeal dated 7-2-1996 passed by the Commissioner (Appeals), Ghaziabad by which an amount of Rs. 25,000/- as penalty was confirmed but confiscation of the seized goods and imposition of redemption fine was set aside. The Department contends that by the impugned order the Commissioner (Appeals) had wrongly set aside the confiscation and imposition of fine in lieu of confiscation of 507 kgs. of printing ink seized from a Tempo and also 4,866 kgs. of printing ink seized from the finishing room of the appellants' factory. According to the present appeal filed by the Department, the Commissioner (Appeals) in the impugned order has erred in Setting aside the order of confiscation passed by the Additional Collector on the ground that confiscation is not valid when goods are not available for confiscation. The Department has relied on the judgment of Uptron India Ltd. v. CCE, Allahabad - 1994 (70) E.L.T. 155.

According to the appellants (Department) the Additional Commissioner who adjudicated the matter had rightly ordered the confiscation of the seized goods and the demand of redemption fine. According to the Departmental Representative if the assessee was not interested in the payment of redemption fine and instead wanted to surrender the property released to them provisionally they were still at liberty to do so. The Department also contends that the procedure followed by the Additional Collector was fully within the observations of the Tribunal in the case of Grauer & Weil (India) Ltd. v. CCE, Baroda - 1986 (25) E.L.T. 338.

The Department has, therefore, prayed for vacation of the impugned order and restoration of the Order-in-Original passed by the Additional Commissioner directing confiscation of the goods.

2. From the record I find that the respondents had filed Cross-objection No. E/CO/51/97-NB. According to the respondents the impugned order relying on the Tribunal order in the case of Grauer & Weil (India) Ltd. v. CCE, Baroda, supra, has stated the law correctly and the findings of the Commissioner (Appeals) does not call for any interference. Ld. Counsel, Shri A.L. Malhotra appearing for the respondents had strongly urged that the adjudicating officer had not given the assessee an opportunity to produce the goods released earlier for safe custody by assessee. He also submitted that the imposition of redemption fine without demanding production of the goods and ordering their confiscation was not legally sustainable. He referred to the security bond ('Supardnama') executed by the respondents on 2-9-1994 in terms of which the assessees had undertaken to keep the goods provisionally released under safe custody and to produce them to the competent authority whenever called upon to do so. Relying on the order of the Tribunal in Grauer & Weil (India) Ltd. v. CCE, supra, as well as the subsequent order of the Tribunal in Karnataka Trading Company v.CCE - 1990 (47) E.L.T. 568, he submitted that it was not open for the adjudicating officer to proceed to impose redemption fine without complying with the conditions of the Bond. As referred to earlier, one of the conditions of the 'Supardnama' was the production of the goods whenever directed by the competent authority. He submitted that once the goods had been released provisionally against a Bond, it was not proper for the Collector to confiscate the goods without observing the terms of the Bond. The

proper course would have been to enforce the bond for any breach of its provisions. Learned Counsel submitted that the Tribunal had in both the cases referred to by him set aside the order of imposition of fine in lieu of confiscation. In view of the above decisions, ld. Counsel submits that the impugned order has rightly set aside the order of confiscation passed by the Additional Commissioner. He prayed for the rejection of the present Departmental appeal on the same grounds. He also submitted that the decision of the Tribunal in Uptron India Ltd., supra, had not discussed the two earlier decisions of the Tribunal setting aside the order of confiscation and imposition of fine in lieu of confiscation when the goods were not available for confiscation.

3. I have considered the submissions and perused the case law. I note that in terms of the security bond ('Supardnama') at page 8 of the Cross-objection filed by the respondents, one of the conditions undertaken by the Respondents at the time of release of the goods provisionally was that the goods would be produced by the assessee whenever called upon to do so by the competent authority. The purpose of releasing the goods provisionally after their seizure is only to allow the goods to be kept in safe custody and in proper condition without deterioration in its quality, etc. The bond allowing provisional release of the goods and the resultant custody thereof by the assessee are primarily based on balance of convenience. The seized goods continue to be the subject matter of further proceedings relating to assessment of duty and confiscation. Confiscation if any, is subject to further adjudication proceedings. If after adjudication the goods are found not liable to confiscation the goods have to be released in favour of the assessee and the seizure pending adjudication comes to an end. On the other hand if the adjudication results in an order holding that the goods are liable to confiscation, the goods should first be available for confiscation. As per the terms of the bond the competent authority should first call upon the assessee for the production of the goods for confiscation. Action to proceed to impose redemption fine or to demand the value of the goods are subject to production of the goods and in terms of the bond. In cases where the goods have been provisionally released subject to execution of a bond (as in the present case) the terms of the Bond have to be strictly observed by the officer as well as by the adjudicating authority. When the goods are not available for confiscation, no order of confiscation of goods or

redemption fine/penalty in lieu of confiscation can be passed unless the terms of the Bond envisaged imposition of penalty even without production of the goods. Such a provision should have been spelt out in the Bond itself. In the present case, I note that the terms of the 'Supardnama' require the production of the goods whenever called upon by the competent authority. While passing the order of confiscation the adjudicating authority has to take into account the status of the goods in terms of the Bond and cannot go beyond the terms of the bond. Since under the terms of the bond the goods are still available for production, any order of confiscation or imposition of redemption fine in lieu of confiscation of the goods without directing the production of the goods is contrary to the terms of the Bond. In this view of the matter and having regard to the ratio of the decisions of the Tribunal in Grauer & Weil (India) Ltd. v. CCE, and Karnataka Trading Corporation, supra, I find no merit in the Department's appeal and the same is rejected.

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