

indsu Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-14-1997

Reported in : (1998)(100)ELT385Tri(Mum.)bai

Appellant : indsu

Respondent : Commissioner of Customs

Judgement :

1. The appellant was a unit located in the Kandla Free Trade Zone and had imported a consignment of parts of washing machine which were imported in order to make these machines which it was licensed to do.

It did not utilise these goods in the manufacture of finished product for more than a year, as required by Notification 77/80. The goods were therefore seized and notice was issued demanding duty, proposing confiscation of the goods and imposition of penalty. The Additional Collector did not accept the appellant's contention that it could not use the goods for manufacture as they were not of the kind required goods of the usage not having been sent by the supplier, and he ordered confiscation of goods with option to redeem on payment of fine. He also ordered that, whether the goods redeemed or not the appellant had to pay duty in view of the provisions of the notification. He imposed a penalty on the appellant. Hence this appeal.

2. We are unable to see how the liability to duty arises if the goods have been ordered to be confiscated and they were not redeemed after such confiscation.

Liability to duty of goods confiscated would be governed by the provision of Section 125. Sub-section (2) of this section makes it clear that where any fine in lieu of confiscation of goods is imposed the owner of such goods shall, in addition, be liable to pay duty and other charges. The logical corollary should be that if the goods are not redeemed, the liability to duty payment of duty will not arise. On confiscation the goods become the property of the Central Government. A notification issued under Section 25 of the Act cannot take precedence over the provision of this section. Duty is therefore not leviable.

3. The appellant could have had recourse to various procedures whereby it could have approached the Department for writing off of duty on the goods which it did not use. There is provision for such write off in the notification itself. There is no satisfactory explanation as to why this was not done. In these circumstances, penalty was imposable.

However, in view of the fact that there was no intention to evade duty or any mala fide attributed we reduce the penalty to Rs. 3,000/-.

Consequential relief.

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