

Additional Collr. of Cus. Vs. Pradip Smithy and Engg. Works

Additional Collr. of Cus. Vs. Pradip Smithy and Engg. Works

SooperKanoon Citation : sooperkanoon.com/12356

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-14-1997

Reported in : (1998)(99)ELT603Tri(Mum.)bai

Appellant : Additional Collr. of Cus.

Respondent : Pradip Smithy and Engg. Works

Judgement :

1. The Commissioner of Customs, Bombay has filed this appeal on a direction from the Central Board of Excise & Customs under Section 129D(1) of the Customs Act, 1962 to apply before the Tribunal for determining the propriety and correctness of an adjudication order dated 26-10-1982 passed by the Additional Collector of Customs, Bombay in the case of import of 26.728 M.T. of Prime Seamless Carbon Steel Pipes valued at Rs. 1,58,974/- CIF. The operative portion of the Impugned order of the Addl. Collector reads as under : "The issue involved in this case is whether the importers M/s.

Pradip Smithy and Engineering Works, Kudal, will qualify for clearance of the goods imported i.e. steel pipes, as Actual User under OGL Appendix 6, list 8 part (I) Item No. 523 of Policy 1985-88. The importers are holding a permanent SSI Registration certificate No. 11/20/00043/PMT/SSI, dated 30-1-1984 wherein manufacturing/processing activity mentioned are 'Agricultural Implements and Fabrication'. The department had made enquiries regarding manufacturing activities of the importers with the Central Excise Authorities at Vengurla and the Superintendent of Customs and Central Excise, Shore Guard, Vengurla vide his

letter No. UGG/GEN/Misc/86/87, dated 18-9-1986 had stated that M/s. Pradip Smithy and Engg. Works were engaged in the manufacturing of agricultural implements and verified that Forging hammer, welding machines and grinder were installed in their unit.

The department's case is based mainly on the statements of Shri Y.S. Ghadi who had inter alia stated that he had no knowledge of order for import of steel pipes and he did not have the capacity to do any fabrication work at Kudal. Mr. Kunal Krishnari is alleged to have caused the importation of the said goods, Mr. Dhiraj Motilal Sanghvi has allegedly opened indent and financed the import and the CHA M/s.

D.R. Soneta had aided and abetted in the attempt of unauthorised clearance under OGL as A.U. (Industrial). It is also alleged that goods were not meant for use by importers but actually for Mr.

Dhiraj Motilal Sanghvi.

The whole case of the department is based on the premise that goods will not be used in the factory of M/s. Pradip Smithy. The fact that they are holding a permanent SSI Registration certificate for fabrication work and that they are having capital goods like forging hammer, welding machine and grinder and that unit is existing and functioning has already been verified by the Central Excise Authorities. Therefore it appears that atleast prima facie the importer is capable to using the imported goods. It is premature to conclude that the subject goods are not intended for use by M/s.

Pradip Smithy.

2. Shri S.V. Singh, the Id. DR appeared for the Commissioner. Nobody is present for the respondents despite notice. The Id. DR referred to the facts of the case and grounds of appeal and emphasised that the Respondent Shri Yeshwant S. Ghadi has admitted in his statement before the Department that he had neither ordered the import of any goods nor had he any knowledge of the goods imported and that he did not need the Seamless Pipes as shown in the import documents but that he

had lent name of his firm for a consideration to Dhiraj Motilal Sanghvi of M/s.

Motilal Laxmichand Sanghvi, Bombay who had offered him 10% of the landed cost of the imported goods as a consideration. There were also statements which corroborate this version of Shri Ghadi and in a such context it was contended that the dropping the charges against the Respondent was bad in law and the order needs to be reviewed.

3. On a careful consideration of the submissions we find that the Additional Collector has relied upon the fact that the jurisdictional Central Excise Officers have verified the Respondents premises and have found that there having capital goods like forging hammer, welding machine and grinding machine and the Additional Collector has also noticed that admittedly the Respondent is holding a permanent SSI registration certificate for fabrication work. The Additional Collector has also therefore concluded that it is premature to say that the subject goods are not intended for use by the Respondent or that is incapable of using it in his factory. However, in the conclusion of the Additional Collector, we find, is not well founded because it would have been more appropriate for the Additional Collector to have also gone into and considered the evidences in the way of statement of Shri Ghadi as well as others involved in the whole episode of the import, namely, Shri Kewal Krishan Aggarwal, Shri Dhiraj Motilal Sanghvi and Shri Sham Kapoor which are all corroborative of each other in their contents pointing to the fact that the import of Seamless Carbon Pipes has been effected by Shri Sanghvi who has used the SSI certificates and the name of the firm of M/s. Pradip Smithy & Engineering Works in arranging for the import of the goods against OGL for a consideration.

We hold that such appreciation of the evidence is essential before the charges could be dropped for the further reason that it is now well established that the statements obtained under Section 108 of the Customs Act, 1962 form substantial evidence in adjudication proceedings and also the further fact that none of the persons who have given statements about import in this case about the misusing of SSI certificate by a third party had gone back on their statements.

Therefore the evidential value of the statements has not got diluted at all and ought to have been considered and dealt with by the Additional Collector especially when he comes to the conclusion that the charges are to be dropped. In this view of the matter we hold that the impugned order is not proper and we set aside the impugned order and direct that the matter be re-adjudicated with reference to the liability of the Respondents for penalty under the Customs Act in accordance with the law and after hearing them in the matter.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com