

inderjit Singh Vs. Cc

inderjit Singh Vs. Cc

SooperKanoon Citation : sooperkanoon.com/13758

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-30-1998

Reported in : (1998)(79)LC365Tri(Delhi)

Judge : U Bhat, S T K.

Appellant : inderjit Singh

Respondent : Cc

Judgement :

1. Appellant, a trader in ball bearings, in the course of search and seizure effected by Customs Officers on 3.7.1991 in his premises, was found to be in possession of 46,623 pcs. of bearings of foreign origin for which he was unable to produce any bills or duty paying documents on that day. In his statement recorded under Section 108 of Customs Act, 1962, he stated that these bearings were purchased from various traders and he produced the purchased bills subsequently. Enquiries were made with the persons who allegedly supplied these goods. Certain varieties of bearings could be imported at the relevant time only by actual users. That being so, appellant could not have purchased these ball bearings of foreign origin from persons who imported them in their professed capacity as actual users. The documents relied upon by the appellant were examined and compared. The department came to the tentative conclusion that all the bearings were imported without payment of duty and in violation of OGL condition. Accordingly, show cause notice dated 1.1.1992 was issued alleging the goods to be clandestinely imported without payment of duty etc. and proposing confiscation under Section

111(d) of the Act and proposing imposition of penalty. Though appellant resisted the notice, the Commissioner confirmed the proposal in the show cause (notice) and imposed penalty of Rs. 50,000/-. In appeal the Tribunal set aside this order mainly because of the unsatisfactory nature of the comparison made by the Commissioner and remanded the case. After remand the Commissioner again passed an order sustaining the show cause notice confiscating the goods allowing redemption on payment of fine of Rs. 15,000/- and Rs. 25,000/- respectively and confirming demand of duty. This order is now challenged.

2. 2804 bearings had been confiscated on the ground that they had been imported subject to actual user's condition and were importable only for actual use by industrial consumers and it was contrary to law for the appellant to have purchased these bearings from the purported actual user. The only contention urged by the learned Counsel for the appellant is that the appellant was a bona fide purchaser and no action had been taken against vendors. He did not know under what circumstances the department refrained from taking action against the importers. Appellant is a trader having experience in the field. It is not possible to accept his present contention that he was not aware of the actual user's condition and therefore, must be regarded as a bona fide purchaser. We find no defect in the order of confiscating these bearings.

3. The next contention relates to confiscation of 7144 pieces of bearings on the ground that they are not covered by the bills produced by the appellant and issued by the importers. The earlier remand was on the ground that comparison made was not proper. According to the learned Counsel for the appellant the comparison after remand also is not satisfactory. We find detailed consideration of the relevant bills in paragraphs 22 to 29 of the order. It is seen that 30 bills were produced by the appellant. The Commissioner has considered every bill, the goods covered by the bill and compared the same with the bearings seized under the panchnamas. The reason for accepting that some of the goods are covered by certain bills and other goods are not covered by any of the bills are set out in the impugned order. Therefore, it is not correct to say that method of comparison has not been highlighted and the basis of the comparison is not given. A close reading of the above paragraphs clearly shows the comparison, the method of comparison and

the basis of comparison.

4. Learned Counsel referred to paragraph 29 of the impugned order which refers to a bill produced by the appellant and covering 875 pieces of bearings. We find that this bill has been accepted and the goods covered thereunder have not been confiscated. Paragraph refers to bill No. 5908 which also has been accepted by the Commissioner. The paragraph refers to bill Nos. 543,23 and 1980 for 150 pieces, 300 pieces and 2860 pieces respectively. The Commissioner has not accepted that any of the seized goods are covered by these bills and this contention is challenged by the learned Counsel for the appellant.

5. The Commissioner has stated that the serial number of ball bearings shown in Bill No. 543 is different from the serial number of seized ball bearings which were alleged by the appellant to be covered by this bill. There is nothing vague or ambiguous in this conclusion. Appellant has not shown that the factual finding of the Commissioner is erroneous. Bill No. 23 refers to 300 pieces of serial Mo. 32218. Bill No. 1980 covers 2860 pieces of serial No. 51205. The Commissioner states that the ball bearings covered by these two bills are covered by bill issued by M/s. A.V. International, Bombay and therefore, the bills are not relevant. The only other reference to the bill issued by M/s.

A.V. International Bombay is in paragraph 22 of the order. This paragraph referred to bill No. A/159 issued by this concern. According to the averments in this paragraph this bill along with three other bills together covered 1035 pieces of ball bearings. The Commissioner accepted that 1035 pieces of ball bearings are covered by these bills.

This would show that the finding in paragraph No. 29 that 300 + 2860 pieces covered by bill No. 23 and 1980 are already covered by the bill of M/s. A.V. International, Bombay is wrong. The bill of M/s. A.V. International, Bombay referred to in paragraph 22 must cover much less than 1035 pieces which represents the numbers of pieces covered by four bills. The number of pieces covered by bill Nos. 23 and 1980 is 3160.

The finding of the Commissioner that the two bills referred to in paragraph 29 covering 3160 pieces are already covered by bill issued by M/s. A.V. International, Bombay, is erroneous. In the circumstances, we hold that the 3160 pieces covered by these two bills must be accepted as having been covered by the supplier's bills. Since the Commissioner has treated the pieces covered by accepted bills to be duty paid, the same conclusion must follow regarding 3160 pieces. We, therefore, hold that the finding regarding 7144 pieces will apply to 7144-3160 i.e.

3984 pieces. Only this number could be confiscated. The redemption fine for these pieces has to be reduced.

6. Learned Counsel for the appellant contended that the burden of proof is on the department and the department has failed to discharge the burden. For this purpose he placed reliance on the decision in *Bon Ton Sight Care* 1983 (64) ELT 239 (T) : 1992 (42) ECR 223 (T). This decision relied upon in the decision of Supreme Court in *Kanoongo & Co.*

where the Supreme Court had explained under what circumstances the burden can be regarded as having been shifted to the offender. One of the circumstances is where the offender gives an explanation and that is shown as wrong or false. We do not think that the decision in *Bon Ton Sight Care* will help the appellant. Appellant did not plead that he handled a large number of bearings from different sources and therefore, he cannot offer any explanation for any particular number of bearings. On the other hand, he came out with definite explanation for different sets of bearings and produced documentary evidence in support thereof. The Commissioner compared the description and the sl. number of bearings in each document with the description and the serial number of ball bearings seized, and accepted some bearings as covered and the rest as not covered. We are not satisfied that Commissioner had committed any error in the comparison as alleged. This is a case where a trader who is not an actual user nor an importer was found to be in possession of a large number of bearings of foreign origin and offered to provide explanation by way of purchase from lawful sources and failed in sustaining the explanation in regard to a substantial number of bearings. In our opinion, this situation is covered by the principle laid down in *Kanoongo & Co.* and

the burden must be regarded as shifted to the appellant. He has failed to discharge the burden in regard to 3984 pieces. Therefore, the confiscation of these goods. Subject to opportunity for redemption has to stand.

7. The next contention relates to correctness of the value adopted by the Commissioner. Appellant has submitted two Annexures 'A' & 'B' at pages. 38 to 42 of the Paper Book. At page 38 is Annexure 'A' showing the value adopted by Commissioner and the bills produced by the appellant. We have already mentioned that the goods covered by some of the bills did not tally with the goods seized. Annexure 'A' which relates to 2804 pieces covered by the actual user's condition have been valued by the Commissioner at Rs. 69,866/-. According to the appellant, the correct price paid by him for these goods was Rs. 51,103/- and the same includes the profit of the supplier. Annexure 'B' contains the value adopted by the Commissioner and the alleged value as per appellant's bill in regard to the remaining 7144 pieces confiscated. We have already held that this number must be reduced to 3984 pieces. The value adopted by the Commissioner for the 7144 pieces is Rs. 2,39,702/-. The value said to be shown in the bills shown by the appellant is Rs. 180742/-. We find that the appellant has not taken into consideration the bill value for items 7, 15, 23 and 27. If these amounts are included, the value suggested by the Commissioner would increase by about Rs. 30,000/-.

8. We asked learned Counsel for the appellant whether he would like the matter to be remanded for redetermination of the value; he suggested that the case may not be remanded at this distance of time and the Bench may adopt a formula for determination of the assessable value.

The Commissioner has not furnished the exact basis on which he determined the value. Of the bills produced by the appellant, one bill referring to 16230 pieces refers to the lot as mixed bearings of different Japan Makers. It is not possible to segregate the bearings covered by this bill and determine the value separately. In the circumstances, we accept the suggestion made by the learned Counsel and direct that the value of 2804 pieces and 3984 pieces should be redetermined, adopting the rate accepted by the Commissioner less 15%.

Since the value requires to be redetermined, the quantum of redemption fine also may have to be redetermined.

9. In the result, we set aside the findings in the impugned order to the extent indicated above and remand the case to the jurisdictional adjudicating authority for redetermining the assessable value of 2804 pieces and 3984 pieces (required to be confiscated) in accordance with the directions contained in this order, the duty payable and the quantum of redemption fine and for passing a fresh order after granting appellant an opportunity of personal hearing.

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