D.B. Shah Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-01-1998

Reported in : (1999)(107)ELT479Tri(Mum.)bai

Appellant : D.B. Shah

Respondent : Commissioner of Central Excise

Judgement :

1. The appellant is aggrieved by the confiscation of 7.818 kg. of silver belonging to him by the adjudication order dated 18-7-1998 passed by the Deputy Collector of Customs and Central Excise, Pune for violation of provision of Chapter IV-B of the Customs Act. His order of the Deputy Commissioner has been upheld by the Commissioner of Customs (Appeal), Mumbai. Shri Vinayak Gaikwad, General Counsel of the appellant, submitted that the seizure of the silver has been made on the ground that it was being possessed by the appellant in specified area for the purpose of Chapter IV-B without valid documents. But the place of seizure is Kolhapur, which is beyond 100 Km from the coast.

The specified area is defined as 100 Km from the coast. In such a situation the seizure is sustainable as held by the Tribunal report in 1988 (34) E.L.T. 257. The lower authorities in their order have not given due consideration to this contention. The learned Departmental Representative, Shri S.V. Singh, pointed out that the seizure of silver has been made from the person who had carried it from Bombay and had alighted from the bus at Kolhapur. Clearly, the acquisition of silver was in Bombay, which is a specified area, and its transport from there to Kolhapur was not covered by prescribed document under Chapter IV-B.The confiscation and penalty on the appellant is ordered.

2. On a careful consideration of the submission, it is seen that the silver was admittedly acquired in Bombay, which is a specified area and as such its acquisition will be covered by provisions of Chapter IV-A.Admittedly, there is no valid document as prescribed under Chapter IV-B for its transport. In such a view of the matter, the confiscation and penalty is correct in law. But considering the relatively small quantity involved, we are of the view that the absolute confiscation of the silver is harsh and the appellants can be given the option to redeem on a fine of Rs. 20,000/- in lieu of confiscation. The penalty on the appellant is also set aside in the circumstances of the case.

The appeal is disposed of accordingly.