A.K. SarIn (Prop.) Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-15-1998

Reported in : (1999)(81)LC286Tri(Delhi)

Judge : J T P.C., S Kang

Appellant : A.K. SarIn (Prop.)

Respondent : Cc

Judgement :

1. Learned advocate Shri Narender Sharma submits that a penalty of Rs. 1 lakh has been imposed on the applicants herein. Apart from that goods have been confiscated under Section 111(d) & 111(m) of the Customs Act, 1962. However, an option has been given to the applicants to redeem them on payment of fine of Rs. 10 lakhs. Learned Advocate submits that the applicant is very keen to get the goods released on payment of differential duty but they are unable to exercise their option because the fine imposed is too heavy and it is contrary to the law and facts of this case. He submits that the applicant has imported various ceramic articles and declared the classification of the same under Tariff Heading 97.03 as 'original sculptures'. However the authorities below have classified the same under Tariff Sub-Heading 6913.90 relating to statuettes and other ornamental articles'. Learned advocate has submitted that an examination of goods was done on 5.6.1998 in the presence of the representative of the applicant, Customs House agent and other concerned officers of the Department. The goods were found to be as per invoice. Later on, however, the Additional Commissioner, the

adjudicating officer herein examined the goods herself and found on the basis of her own examination that the goods are not 'original sculptures' since original sculptures are works of art and they normally carry the signatures of the artist. According to the examination carried out by the Additional Commissioner, no such signature of the artist were available on the goods.

2. This assertion of the adjudicating authority was strongly challenged by the applicants before the lower appellate authority in their appeal against the adjudication order. In this connection learned advocate has drawn our attention to para 5 of page 36 which is reproduced below: 5. As per para 5 of the Order in Original the Additional Commissioner specified "IT IS WELL KNOWN THAT ORIGINAL ARTISTIC WORKS ARE REQUIRED TO BE SIGNED BY THE ARTIST AND BECAUSE THEY ARE ONE OF KIND, THEY ARE VERY VALUABLE" and also "ON MY GOODS". We submit that all our pieces are having signatures of the Artist/Maker Antica Athenam Italy and also our pieces are only one and only one piece of Artwork.

We can categorically say that Additional Commissioner has never done any examination of the cargo personally and it is totally wrong that she has physically examined 10% of the goods on 11.6.1998. If the Additional Commissioner would have examined the cargo then she would have never stated that the goods have 'No Makers Mark'. Sir, you may Order the re-examination of the goods and then only truth will prevail.

Learned advocate however submits that the lower appellate authority has completely ignored this submission made by the applicant/appellant and there is not a whisper about it in the impugned order as to why he has not dealt with this submission. Learned advocate, therefore submits that the impugned order suffers from fatal flaw which goes to the root in classification of the goods. He was even prepared to get the goods examined by the Tribunal.

3. Learned JDR Sh. R.S. Sangia has no comments to offer on this omission in the impugned order.

4. We observe that the omission pointed out by the learned advocate really goes to the root of the matter for determining the question whether the goods are 'original sculptures' or not. This plea has not been dealt with by the lower appellate authority. He was duty bound to deal with this plea and give his finding thereon. We are therefore of the view that the matter is fit for remand. Consequently we set aside the impugned order and allow the appeal by remand. Lower appellate authority should examine the goods himself and give his finding on all the submissions made by the appellants. Whether the imported goods are 'original sculptures' or not is a question of fact to be determined in this matter. In order to determine the said question, Commissioner (Appeals) will be at liberty to take opinion of an expert in this respect. One such expert which comes to our mind is Curator of National Museum or any other suitable expert which the Commissioner (Appeals) may deem fit. Appeal is thus allowed by remand. Since the appeal is itself disposed of, stay petition gets disposed of.

5. We expect the learned Commissioner (Appeals) to decide the case expeditiously.