G.S. Processors Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-12-1998

Reported in : (1999)(63)ECC215

Appellant : G.S. Processors

Respondent : Collector of Central Excise

Judgement :

1. Briefly stated the facts of this case are as follows : M/s. G.S.Processors, the appellants cleared the textile fabrics processed by them which was detected in the transit. On the basis of this violation the duty liability has been imposed on the appellants despite their protestation that the value taken at the behest of the Panchas is highly inflated and do not represent the correct market value of the goods seized by the department. The penalty has also been imposed on the appellants in respect of Additional duty being the only duty leviable on the goods under Additional Duties of Excise (Goods of Special Importance), 1957.

2. Ld. Advocate appearing for the appellants, submits that the value taken by the department are highly arbitrary on the basis of evidence of two Panchas mentioned in the Panchanama. From a reading of the Panchanama, he submits the said panchas namely Shri Joginder Singh Shivram and (2) Narsing Sambhaji Katke being their occupation only of servants; they are not business man in trading of cloth. Therefore, their evidence cannot be relied on as evidence of experts regarding valuation of the goods. Ld. Advocate therefore, submits that it would be improper to rely on value stated in panchanama on the question of the valuation of

goods for the purpose of levy of Additional Excise Duty.

3. As regards the penalty, ld. advocate submits that no penalty can be imposed in view of the Delhi High Court judgment in the case of Pioneer Silk Mills v. U.O.I, relied upon in 1994 (71) E.L.T. 386 (Tribunal).

Similarly, he submits that confiscation of the goods is also not valid in view of the aforesaid citation.

4. Opposing the contention ld. SDR Shri A.K. Agarwal, reiterated the findings of the adjudicating authority.

5. We have carefully considered the pleas advanced from both the sides.

We observe that adjudicating authority had accepted the value given on the basis of evidence in the Panchanama as given by the two panchas as mentioned above. It has also been further held by the adjudicating authority that the appellants have not been able to substantiate that the price of the goods seized are Rs. 13.50 and Rs. 10 per metre respectively as contended by them. In the absence of any evidence adduced by the appellant on value he has considered the valuation given in the Panchanama to be correct one and determined the levy of duty accordingly. He has also confiscated the goods and imposed the redemption fine and imposed penalty as well. He has also given the option to the appellant to redeem them on payment of certain fine. This approach of the Commissioner adjudicating the case, in our view, is not correct. It is apparent that two panchas who have stated that the market value of the goods is at Rs. 60 per metre and 30 per metre respectively for the two varieties of fabrics is not acceptable in-as-much as two panchas cannot be considered to be experts regarding the market price. Panchanama shows them to be in service. They are not shown to be business man or serving with a business man dealing in cloth. Therefore, their evidence is of no value so far as the valuation of the goods is concerned. The proper course for the adjudicating authority was to make the market inquiry regarding the value of the goods and then determine the levy of duty on that basis. We therefore, accept the plea of the ld. advocate that the matter is fit for remand so far as the value of the goods is concerned. Consequently we set aside the impugned order and direct the

Commissioner to cause the proper market inquiry, disclose the report about the market inquiry to the appellant and then determine the levy of duty on the textile fabrics. This exercise will have to be done by the Additional Commissioner in accordance with the principles of natural justice.

6. As regards the penalty, we agree with the ld. advocate that in view of the Delhi High Court judgment and Tribunal's judgment as mentioned supra, neither the confiscation of the goods nor imposition of penalty is justified. Hence we set aside the same. The appeal disposed of in the above manner.