Venus Traders Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-23-1998

Reported in : (1999)(63)ECC295

Appellant : Venus Traders

Respondent : Commissioner of Customs

Judgement :

1. These two applications are for early hearing. With the consent of the parties appeals were taken up.

2. The facts of the case are that the appellants placed orders on foreign sellers for the supply of certain electronic games/toys. The goods were supplied and bills of entry were filed. The question was whether the goods could be cleared without special import licence or not. It was found that it required licence. The only question that has been raised before me is whether the impugned orders are wrong when the orders do not mention which Sub-section of Section 112 is attracted.

The learned Counsel, Shri Jerry Lewis, invited my attention to the judgment of the Tribunal in Balvir Singh v. Collector of Customs - 1991 (56) E.L.T. 64 where in identical circumstances with that of the instant case the Tribunal has held, following the judgment of the Madras High Court in B. Lakshmi Chand v. Govt. of India - 1983 (12) E.L.T. 322 that failure to indicate the particular Sub-section to Section 112 will vitiate the adjudication order.

3. As against this Shri S.V. Singh, learned DR, invited my attention to the judgment of the Tribunal in following cases - Dilip Kumar Dev v.CCE, Calcutta - 1995 (77) E.L.T. 366, Agarwal Udyog v. CCE, Kandla - 1994 (72) E.L.T. 133 for the proposition that no mention in clause in the show cause notice not relevant when source of power could be validly traceable under Section 112(b) of the Customs Act.

4. I have considered the rival submissions. In the judgment of the Madras High Court in B. Lakshmi Chand v. Govt. of India - 1983 (12) E.L.T. 322 that was the case of show cause notice issued. [Please see paragraph 3 of the judgment]. On that score the learned single Judge of Madras High Court held that there must be specific mention of either Clause (a) or Clause (b) of Section 112. However, in the subsequent judgment of the Tribunal in Dilip Kumar Dey case the learned two Members of the Bench have referred to the judgment of the Supreme Court in State of Sikkim v. Dorje Thering Dhutia and Ors. - AIR 1991 SC 1933 which held as follows - "the fact that the State Government purported to act under Rule 4(3) of the Rules in issuing the impugned notification is of no consequence. When the source of power can be validly traced then the State action in the exercise of such power cannot be struck down on the ground that it was levelled under a different position". The Tribunal following the said judgment upheld the levy of penalty. The judgment of Agarwal Udyog rendered in 1994 (72) E.L.T. 133 also held that as long as reading of the order makes it clear as to which Sub-clause of Section 112 is relied upon for the purpose of imposition of penalty specific non-mention will not be fatal to the case of the department.

5. In the instant case I am of the view that the penalty can be invoked in this case under Section 112(b) of the Act. As long as this can be identified easily the impugned order cannot be vitiated. Hence, in my view the argument of the learned Counsel Shri Jerry Lewis cannot be accepted. Appeals are dismissed.