Ram Gopal LachminaraIn Vs. Cc

Ram Gopal LachminaraIn Vs. Cc

SooperKanoon Citation : sooperkanoon.com/15041

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-18-1999

Reported in : (1999)(84)LC498Tri(Mum.)bai

Judge : J S Murthy

Appellant : Ram Gopal Lachminarain

Respondent : Cc

Judgement :

1. This is party's appeal against the above captioned impugned order dated 1.12.1986 of Collector of Customs, Mumbai praying for setting aside the same, and to hold REP licence produced for clearance of 160 cartons containing 1920 roles (sic) of PVC sheets valued at Rs. 1,02,653/- GIF imported from U.K. is valid, and for a direction to department to issue detention certificate from the date of filing of Bill of Entry till the clearance of the above goods and for any other deemed relief in the facts and circumstances of the case.

1.1. The facts of the case are that the Appellant, as importers, of above goods have claimed clearance against REP licences as per the product group C11.4 of appendix 17 of AM 1984-85 under Bill of Entry No. 742/81 dated 4.4.1986 through their CHA 11/278. The goods were examined on first check basis and sample of goods were called for inspection. Marking of description as mentioned in the invoice were not found on the goods labels found on them described as "Prepasted Vinyl Kingfisher Wall Coverings"Goods were found to have various designs and are indicated by various art Nos. From the inspection of the sample and the marking on the goods it appears that goods were wall papers and are in the nature of consumer goods, covered by Entry No. 121 of appendix 2B Part B AM of 85.88 Policy (Entry No. 104 of appendix 2 part of AM 84-85 Policy) and are not covered by REP licence for product group C.AA. 4 produced for the clearance of the goods. Sample of the goods were tested, out of 20% of goods detained by the department, after releasing 80% of the goods under ITC bond as ordered by W.P. No.1170186 by Bombay High Court by the Custom House laboratory and found to be made of PVC film having thickness of 0.15 mm. backed by paper, the total thickness being 0.26 mm. PVC film has design on outer side.

Goods have been imported in contravention of Section 3(1) of Import Control Order 1955, which prohibition on restriction by virtue of Section 3(2) of the aforesaid Act, shall be deemed to be prohibition under Section 111 of the Customs Act, 1962. The goods are liable to confiscation under Clauses (d) and (m) of above Section, and Appellant is liable to penal action under Section 112 of the Customs Act, 1962.

Show cause notice under Section 124 of Customs Act, 1962 was issued to the Appellant importer on 18.9.1986 for the above said allegations on 16.10.1986. The Appellant filed the reply through his advocate.

Personal hearing was fixed on 30.11.1986. Shri O.P. Goenka, partner of the Appellant submitted the arguments. After perusal of case records, impugned order was passed, releasing the balance of goods as per Bombay High Court order, and imposed the penalty of Rs. 3 lakhs on the Appellant under Section 112 of Customs Act, 1962. Hence this appeal, 2. In support of the appeal, Learned Counsel Shri S.N. Kantawala for the Appellant has argued that the Collector has not at all considered the documents produced by the appellant in passing the impugned order without any reasons (Exhibits G and H). C/557/87-Bom order fully covers this case, as parties, issue, and material on record are same. The Collector should have adopted in passing the impugned order. The Learned DR Shri Ashokan has argued that PVC sheet imported is a wall covering in Trade circle. Trade understands only as such. It is a consumer goods. Appendix 2B prevails over those items. Penalty can be imposed up to 5 times of the value of goods. Appellant is a trader precedent decision only modifies penalty. In reply it is contended the party's appeal is allowed in that case, which is not challenged and department is bound by it.

3. Point for consideration whether this a fit case to allow? My finding in the affirmative.

4. Perused the Exhibits A to K as per index, appeal memorandum, and orders in C/557/87-Bom. under No. 2200/95-WRB dated 14.11.1995, between the Appellant and department pertaining to 260 rolls of PVC sheets imported against REP licence. The facts in both the cases are similar in all repeats. This is a precedent decision, which has become final.

According to it, contentions in both the cases are same. Department has not produced any subsequent decision in support of its case. In the absence of it, there is no reason why the precedent decision should not be allowed, which has upheld past practice, and has examined in detail the goods involved, and test result, and past practice of the department. In this case, even though goods were available in part, it is not confiscated, even though held liable for confiscation. Penalty is imposed nearly 3 times the value of goods. The impugned order cannot be upheld. There are sufficient and satisfactory grounds to modify it, in the light of records produced and precedent decision. Point raised is answered in affirmative. Appeal is allowed with consequential relief.