Continental Corpn. Vs. Cc

Continental Corpn. Vs. Cc

SooperKanoon Citation : sooperkanoon.com/15055

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-21-1999

Reported in : (1999)(84)LC491Tri(Mum.)bai

Judge : J S Murthy

Appellant : Continental Corpn.

Respondent : Cc

Judgement :

This is the party's appeal against the impugned order dated 24.1.1995 of Collector of Customs (Appeals) Bombay, praying for setting aside the same, and to hold that the imported goods is not covered under Negative List with consequential relief of refund of fine and penalty.

1. The facts of the case are that the appellants imported 9700 kgs. of Balsa Medendron Mukul in 130 bags under Bill of Entry No. 5640 dt.

20.5.1993 (IGM No. 960 dated 17.5.1993 per S.S. Vega-Valued at Rs. 48,500/- GIF through CHA No. 11/234. They declared as raw material for agarbathi. The goods were first checked and test report obtained from Deputy Chief Chemist. As per the literature produced by the appellants item appears to be widely used in making of Ayurvedic and unani medicines, and also in perfumes and agarbathi. As per Public Notice No.117 (PN) 92-97 import of any crude drug required for making Ayurvedic and Unani Medicines not included in the list annexed thereto require a licence. The appellant did not submit it. The appellant is not an actual user, but Trader. Goods imported are liable to confiscation under Section 111(d) of Customs Act, and appellant /importer is liable for personal penalty under Section 112(a) of Customs Act, Show Cause notice was issued in that regard on 25.6.1993. Appellant sought for personal hearing through the counsel, which was fixed on 9.7.1993, after replying notice on 28.6.1993, where he submitted the arguments, and produced copy of the book page 138-39 titled "Useful Plants of India". Assistant Collector of Customs Appraising group passed the orders on 19.7.1993 confiscated the imported goods under Section 111(d) of Customs Act with the Redemption fine of Rs. 48,500/- and imposed penalty of Rs. 24,500/- on the appellant. The appeal of the appellant was partly allowed by reducing the redemption fine to Rs. 25,000/- and Penalty to Rs. 15,000/- under the impugned order. Hence the appeal.

2. Shri Anil Balani, the learned Counsel for the appellant has urged that import is of May, 1993, and para 156 of 1992-97 Policy applies.

Raw material imported has multipurpose use. Only crude drugs and consumer goods are restricted. Mere crude drugs is not sufficient to come under that category. As per past practice, as per the additional Commissioner, Section 111(d) of Customs Act is not applicable.

is cited in support of the contention that past practice is binding on the department. Fine and penalty should have been quashed in the impugned order. The Ld. SDR Shri C.P. Rao, has argued that the appellant is a Trader, not actual user, literature indicates that imported goods is used in both Ayurvedic and Unani. P.N.117/31 is binding. Item imported is not in its enclosed list. Assistant Collector has examined in detail, and his order is correct. Final use of imported goods is not under the Control of Trader. Penalty is not relevant, for market value, which is relevant only for redemption fine.

Impugned order is in correct approach. Case law is not clear about confiscation. Department might have appealed against the order of Additional Commissioner. In the reply it is urged mat no appeal is filed by department. Imported goods is not a consumer goods. It is not covered by Public Notice. No licence is required.

3. Point for consideration is whether there are sufficient and satisfactory grounds to set aside the impugned order? My finding is in the Negative.

4. Perused the Export and Import Policy of 1992-97 Clause 22 about free importability, Para 156 in part II 'A' consumer goods under the heading consumer goods freely importable at serial No. 11 crude drugs required for making Ayurvedic and Unani Medicine is notified. Public Notice No. 117(PN) 92-97 and its annexure I list of crude drugs is also seen Balas Medendron Mukul does not find a place in the said list. As per para 3 of Public Notice a licence is required for its import even by a manufacturer. Free importability is only in the case of actual user, holding a manufacturing licence, of an item finding a place in the list of drugs enclosed to Public Notice. It is not the case of the appellant.

5. Orders-in-original and appeal have partly accepted the case of appellant, that goods imported are not a perfumery compound, and past practice have to be accepted, and leniency is shown by reducing fine and penalty. The reasonings given in the light of the literature, role of importer, is just and proper. The order of the Additional Commissioner is considered by the Collector (Appeals). It does not deal with Balas Medendron Mukul, but different goods Galangal Roots (Kulanjan). It is held to be a raw material for chewing Industry as a flavouring constituent. The appellant had a firm stand in that case that it will not be used as a crude drug. But, in this case it is the contention of the appellant that imported goods is used in Siddha Medicines Manufacture based on the book titled "Formulary of Siddha Medicines" Published by Indian Medical Practitioners Cooperative Pharmacy and Stores Ltd. The appellant is a Trader, imported goods is used in the manufacture of Ayurvedic and Unani Medicines as crude drug.

Since he is not an actual user, as held by lower authorities, if benefit of doubt is given to appellant, the interpretation of Policy will be illogical, i.e. benefiting a trader and Punntiring (sic) an actual user. It is concurrently held that import of goods require a specific licence. Now there are no strong grounds to Negative it. The impugned order has given sufficient relief. So there are no compelling reasons to interfere and disturb it. Point raised is answered in the Negative. Hence I pass the following order.

For the reasons discussed above, appeal canot be allowed. It is rejected.