SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Commissioner of Customs Vs. Johnson and Johnon Ltd.

Commissioner of Customs Vs. Johnson and Johnon Ltd.

SooperKanoon Citation : sooperkanoon.com/15339

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-08-1999

Reported in : (2000)(117)ELT723TriDel

Appellant : Commissioner of Customs

Respondent : Johnson and Johnon Ltd.

Judgement :
1. In the order impugned in the appeal, the Collector has found that the charge in the notice, against the respondents, that it imported spares of machinery used to manufacture sanitary napkins in order to assemble complete machinery, was not substantiated by any evidence. He was also of the view, that since an order under Section 47 of the Customs Act, allowing clearance of the goods had been passed and the department had not filed appeal against it, the notice for unauthorised importation was barred by limitation.

3. So far as the question of limitation has concerned, the department's appeal had to be accepted in the light of the decision of the Supreme Court in Union of India v. Jain Shudh Vanaspati Ltd. 1996 (86) E.L.T.460 (S.C.) 4. However, the Collector's finding that the department has not been able to establish, by means of sufficient evidence, the charge of illegal importation has not been successfully assailed in the appeal.

In our view, it is not sufficient to say that the respondent was unable to satisfactorily explain, the presence of the additional machinery, referred to as a

"non-woven line". The statements of E.R.G. Menon, Purchase Manager Import, S.V. Patkar, Chief Engineer when investigation were going on only indicate that they were not aware of the details of the machinery. This lack of information by itself would not have any significance if one considers that in 1979, when the notice alleged that the spares were imported, Patkar was not even with the respondent's company and Menon was not concerned with the purchase.

Even if we attribute deliberate evasion to the statements of the officers of the company, the appeal is not able to overcome the point made by the Collector that, in the absence of the goods in question being notified either under Section 123 or Chapter IV-A of the Act, the burden of proving illegal importation was on the department and that this has not been discharged. We, therefore, see no reason to interfere with the order impugned in the appeal.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com