Cc Vs. R.C. Fabrics (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-13-1999

Reported in : (2000)(90)LC257Tri(Delhi)

Judge : J Balasundaram, S T G.R.

Appellant : Cc

Respondent : R.C. Fabrics (P) Ltd.

Advocate for Def. : Shri. Vivek Sood

Judgement :

1. The Revenue is aggrieved by the order of the Collector of Customs, Delhi who has dropped the proceedings emanating from show cause notice dated 18.1.1991 proposing confiscation of seized goods i.e. 31061 mtrs.

of 100% polyester fabrics for contravention of the provisions of Import Licencing and proposing imposition of penalty on the ground that an earlier adjudication order dated 15.1.1991 in respect of the same consignment had already been passed and, therefore, another adjudication order in respect of the same consignment was not permissible in law.

2. The brief facts are that the respondents herein filed a Bill of Entry No. 151684 dated 16.8.1990 for clearance of goods declared as 100% polyester fabrics (denier 150 to 300) 150 cms. without payment of duty, against an advance Licence dated 31.1.1990-(DEEC Book No. 008053 dated 31.1.1990). Examination of the

goods on 3.9.1990 revealed an excess of 843.35 mtrs. in the consignment over and above the quantity declared in the Bill of Entry. The Assistant Collector passed an order on the note sheet on 22.9.1990 directing the importers to pay redemption fine of Rs. 25,000/- and personal penalty of Rs. 5,000/- as well as duty leviable on excess goods, and the formal Order-in-Original was passed on 15.1.1991. Based on the information that the exports effected by the respondents under the DEEC Book in question were fraudulent, the consignment was detained in September 1990, samples were drawn for test in November 1990 and the chemical analysis report dated 4.12.1990 of the samples indicated that the denierage of the fabrics was 327 on the warp side and 310.2 on the weft side, while the advance Licence permitted import of polyester fabrics of denier 150 to 300. It, therefore, appeared that the entire consignment was liable for confiscation for misdeclaration of the denierage with intent to evade payment of duty and that the duty amount of Rs. 16,01,279/- was leviable on the goods since they were not covered by the DEEC Book and the advance Licence and that the Directors of the firm were liable to penalty. During the pendency of the investigations, the importers filed CWP No. 3537/90 in the Delhi High Court and as per the Court orders, a show cause notice was issued on 18.2.1991. The Additional Collector of Customs vide adjudication order dated 25.2.1991 imposed redemption fine of Rs. 4 lakhs and a personal penalty on the Directors of the firm.

This order was challenged by the importers and was set aside by the High Court which directed the Additional Collector to decide the matter afresh after dealing with all the submissions of the importers, including the issue of jurisdiction viz. as to whether a fresh show cause notice could be issued in view of the existence of an order dated 15.1.1991 passed by the Assistant Collector of Customs. The case was adjudicated vide the impugned order which is dated 22.10.1993 wherein the Collector dropped the proceedings, giving rise to the present appeal.

3. We have heard Shri N.K. Bajpai, learned Counsel on behalf of the Revenue and Shri Vivek Sood, learned Counsel for the respondents.

4. The Revenue contends that the order dated 22.9.1990 on the note sheet which was then formally communicated by order dated 15.1.1991 only related to excess

quantity of 843.35 mtrs., that the order for detention of the goods was passed on 22.9.1990, samples were drawn and tested in November and December 1990 respectively and it is only on chemical analysis that the goods were found not to conform to the goods permitted to be imported under the DEEC Book and that the order dated 15.1.1991 being only a formal communication of the note sheet order already passed on 22.9.1990, (prior to detention and testing of samples), the order of 15.1.1991 could not have gone into the aspect of misdeclaration of description of goods and had to be confined to the issue of excess quantity only. The Department submits that since no out of charge order under Section 47 of the Customs Act 1962 was passed in respect of the disputed consignment, the Collector of Customs was acting within his jurisdiction in issuing a show cause notice alleging contravention of the Import Licencing provisions and that the order dated 15.1.1991 passed by the Assistant Collector on the excess quantity thus did not operate as res-judicata for the Collector to hold, in the impugned order, that another adjudication order in respect of the same consignment was not permissible under law. Learned Counsel, therefore, prays that the impugned order may be set aside and the matter remanded for decision on merits.

5. The prayer is opposed by the learned Counsel who draws our attention to the order of the Hon'ble Delhi High Court in the case of R.C.Fabrics v. Union of India in which the Court has held (in para 16 of the judgment) that the Collector vide his order dated 22.10.1993 was right in holding that he had no jurisdiction to pass a fresh order of adjudication in view of the earlier order dated Jan. 10/15, 1991 covering the consignment in question and submits that once the High Court has decided the issue of jurisdiction, it is not open to the Revenue to reopen that question before the Tribunal.

Learned Counsel also cites case law on the point that there cannot be more than one adjudication order in respect of the same consignment.

He, therefore, prays that the impugned order may be upheld and the appeal of the Revenue rejected.

6. We have carefully considered the submissions of both sides. We find that even though the High Court has noted in para 16 of its judgment that the order of the

Collector dated 22.10.1993 is not the subject matter of challenge before it, it has categorically upheld the finding of the Collector in the impugned order that he had no jurisdiction to pass a fresh adjudication order in view of the earlier order dated 10/15.1.1991 covering the consignment in question. The Court has held in para 21 of its judgment that since the petitioner has paid the redemption fine and penalty in accordance with the adjudication order dated 15.1.1991, it was entitled to release of the goods and their detention after 15.1.1991 by the Customs authorities was illegal, without jurisdiction and null and void. The High Court has directed release of the imported goods to the petitioners on payment of demurrage, container charges and ground rent, from the date of storage of goods till 15.1.1991. In view of the above High Court order, we decline to interfere with the impugned order and accordingly uphold the same and reject the appeal of the Revenue.