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Escorts Class Ltd. Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-24-2000

Reported in : (2000)(119)ELT179TriDel

Appellant : Escorts Class Ltd.

Respondent : Commissioner of Customs

Judgement :

1. Appellant imported two pieces of Combine Harvesters. It was their intention to develop Combine Harvester to cater to the needs of the Northern Indian market where wheat is grown on dry ground. The reconditioned second hand harvesters, which were imported describing them to be prototype, was not covered by the Import and Export Policy and Procedures 1997-2002. Consequently, Commissioner of Customs by order-in-original No. 3/10-61/98 VA dated 16-10-1998 confiscated the same under Section 111(d) of the Customs Act, 1962. The same were allowed to be redeemed on payment of fine of Rs. 4 lakhs. A personal penalty of Rs. 20,000.00 was also imposed under section 112(a) of the Act. This order is under challenge.

2. New Import and Export Policy of the Central Govt. for the period 1997-2002 was made available to me. Chapter 5 deals with imports.

Paragraph 5.1 allowed capital goods, raw materials, intermediates, components, consumables, spares, parts, accessories, instruments and other goods to be imported without any restriction except to the extent they are regulated by the

negative list of imports or any other provision of the policy. In relation to second hand goods, paragraph 5.3 provided that all second hand goods, other than capital goods, shall be restricted for imports and may be imported in accordance with a Public Notice or a licence issued in this behalf. Goods imported in the instant case are second hand goods. It is common case that they are not capital goods. In such a situation, they could have been imported only in accordance with a public notice or a licence issued for the same. Appellant has no case that these goods were imported in accordance with a public notice or a licence. In such a situation, the import is hit by paragraph 5.3 of the policy. When it is so hit by the policy, argument that paragraph 5.43 of the handbook of Import and Export Policy will come to the rescue of the appellant cannot hold good.

3. In the circumstances detailed above, I do not find any illegality in the order passed by the Commissioner. Appeal fails. It is accordingly dismissed.

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