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

Anand Kumar Gupta Vs. Commissioner of Customs

Anand Kumar Gupta Vs. Commissioner of Customs

SooperKanoon Citation : sooperkanoon.com/17543

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-25-2000

Reported in : (2000)(120)ELT407TriDel

Appellant : Anand Kumar Gupta

Respondent : Commissioner of Customs

Advocate for Pet/Ap. : Shri. K. Kumar

Judgement :

2. The appellants imported 6324 Kgs. of long pepper and claimed clearance thereof in terms of para 22 of the Export and Import Policy 1992-97. The goods were physically examined by Customs officers and found to tally with the declaration made by the importer. The Department, however, took the view that the goods were of agricultural origin and could be imported only under specific import licence. No specific import licence in respect of the goods having been produced by the importer, the Department treated the import as unauthorized and the goods as liable to confiscation under the Customs Act. They also treated the importer as liable to penal action under the Customs Act.

The matter was eventually adjudicated by the Additional Collector of Customs as per order dated 3-12-1993, whereby the goods were confiscated and the appellant was allowed to redeem the same on payment of Rs. 18,000.00 as redemption fine. The Additional Collector, further, imposed a personal penalty of Rs. 5000.00 on the party. Against this order of adjudication, the Department preferred appeal to

the Commissioner of Customs (Appeals), contending that the amounts of fine and penalty were too inadequate. The Department prayed for imposition of higher redemption fine and penalty on the appellant. The appeal was disposed of by the lower appellate authority as per order dated 26-04-1999, which is the order impugned in the present appeal filed by the appellant.

3. I have carefully examined the impugned order and connected records of the case. I have also perused the memorandum of the Department's appeal filed before the lower appellate authority, which has been brought on record today by the learned Counsel for the appellant as required by the Bench. I have also heard Shri K. Kumar, learned Counsel for the appellant and Shri Sumit K. Das, learned DR for the Revenue.

4. The ld. Advocate has, at the outset, drawn my attention to the last paragraph of the impugned order and has submitted that the lower appellate authority has upheld the Department's case as contained in their appeal and as agreed with the points submitted in the memorandum of that appeal. The lower appellate authority, the ld. Advocate points out, has found that the Additional Collector's order is not just and correct. The lower appellate authority has, accordingly, rejected the additional Collector's order and left the entire matter to the Department for fresh decision, after upholding the Department's case as stated in their appeal. The ld. Advocate further submits that the lower appellate authority has no jurisdiction or power to leave the question of enhancement of fine and penalty (as prayed for by the Department in their appeal before that authority) in the hands of the Department under Section 128A of the Customs Act. The further submission of the ld. Advocate is that it was incumbent upon the Commissioner (Appeals) to issue a show-cause notice to the party under the first proviso to Sub-section (3) of Section 128A of the Customs Act before passing final order in the appeal of the Department wherein the only prayer was for enhancement of redemption fine and penalty. The lower appellate authority has passed the impugned order without doing so. The ld.Advocate has, therefore, prayed for allowing the present appeal by setting aside the impugned order of the Commissioner (Appeals).

5. The ld. DR, on the other hand, submits that the lower appellate authority has set aside the order of the Additional Collector and remanded the matter for de navo adjudication, which according to the ld. DR, was well within the jurisdiction and powers of that authority under Section 128A of the Customs Act. He, therefore prays for upholding the order of the Commissioner (Appeals) and dismissing the present appeal.

6. I have given careful consideration to the rival submissions. On a careful examination of the relevant provisions of Section 128A ibid, I observe that it is mandatory for the Commissioner (Appeals) before enhancing any penalty or fine in lieu of confiscation of goods to give a reasonable opportunity of showing cause against any order of such enhancement vide first proviso to Sub-section 3 of Section 128A ibid.

It has not been disputed before me that the Department's appeal before the Commissioner(Appeals) was one in which the only prayer was for enhancement of redemption fine and penalty. It has also not been disputed that the lower appellate authority has "upheld the appeal" of the Department and has "agreed with the points submitted in the appeal". In the light of these undisputed facts, I observe, what the lower appellate authority did by way of the impugned order was to leave the matter of enhancing redemption fine and penalty in the hands of the Department. The ld. DR has construed the word 'Department' used (by the lower appellate authority) in this context as the adjudicating authority while the ld. Advocate has maintained that the word 'Department' means nothing but the Department. Whether it be the Department or the adjudicating authority, one thing is clear that the lower appellate authority has abdicated his power of enhancing penalty and fine in favour of somebody else. Such power is a power which the lower appellate authority did have under Section 128A of the Act. Even if the Commissioner (Appeals) had wanted to enhance the penalty and fine himself, he could have done so only after issuance of a show-cause notice as required by the first proviso ibid. This, he did not do.

While agreeing with the points raised by the Department in their appeal, the ld. Commissioner (Appeals) did not state any reason whatsoever for the finding that

the Additional Collector's order was not just and correct. The impugned order to this extent is, clearly, a non-speaking one. In any view of the matter, the impugned order of the Commissioner (Appeals) cannot be sustained and the same has to be set aside.

7. At this stage, the ld. Counsel for the appellant has reiterated the facts and circumstances of the case and has submitted that the adjudicating authority had imposed the redemption fine and penalty, having due regard to all such facts and circumstances. The Additional Collector had passed his order of adjudication in December 1993 and the appellant deposited the redemption fine and penalty pursuant to the said order, in 1994. The Department filed their appeal against the Additional Collector's Order in the year 1995 and such appeal was pending with the lower appellate authority for over four years. The lower appellate authority passed the impugned order in April 1999. The ld. Advocate, further, submits that the appellant will put to irreparable prejudice and injustice by any order of remand at this distant point of time which will virtually consign him to a second round of litigation over an issue settled fairly by the Adjudicating Authority as long before as in 1993. The ld. Counsel therefore prays for a final decision on merits. The ld. DR, on the other hand, submits that the matter has to be remanded to the lower appellate authority for de navo consideration and decision.

8. Having regard to the fact that the only question involved in the present case is regarding the extent of penalty and fine imposable on the appellant and that the order of the Additional Collector imposing a fine of Rs. 18,000.00 and a penalty of Rs. 5000.00 on the party appears, in my view, to be fair and just in the facts and circumstances of the case, I do not see any reason to accede to the request of the ld. DR for a remand at this late stage. It is also pertinent to note that the total assessable value of the confiscated goods is just an amount of Rs. 53,000.00 even according to the Department. A fine of Rs. 18,000.00 or a penalty of Rs. 5,000.00 cannot be held to be inadequate.

I, therefore, do not see any valid reason for remanding the matter on the question of adequacy of fine and penalty to the lower appellate authority. Accordingly, I allow the appeal by setting aside the impugned order of the Commissioner

(Appeals).

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