Commissioner of Central Excise Vs. A.C.E. Foods

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-25-2000

Reported in : (2001)(130)ELT929TriDel

Appellant : Commissioner of Central Excise

Respondent : A.C.E. Foods

Judgement :

1. In this appeal filed by the Revenue the issue for our consideration is whether the redemption fine could be levied when the seized goods had been provisionally released to the appellants on execution of a bond. The Assistant Collector of Central Excise who had adjudicated the matter had imposed a redemption fine of Rs. 1/00,0007- in lieu of confiscation of the ice cream cones valued at Rs. 4,54,238.50. On appeal, the Commissioner of Central Excise (Appeals), Ghaziabad while confirming the duty liability vacated the redemption fine. He has referred to Tribunal decision where it has been observed that when the goods were not available for confiscation the redemption fine in lieu of confiscation was not maintainable. In appeal, the Revenue had pleaded that the goods were released provisionally on the request of the respondents and the goods were liable for confiscation. It has been stated that the seized goods were released provisionally as per the provisions of Rule 206 of the Central Excise Rules, 1944 on party's own request. They were under the obligation to produce the goods when so required. Detailed reasonings have been given in the grounds of appeal that in such circumstances the respondents could not be absolved from the

responsibility of paying the redemption fine and to that extent the view taken by the learned Commissioner of Central Excise (Appeals) was not correct.

2. When the matter was called, no one appeared for the respondents.

They had prayed for decision on merits.

3. We have heard Shri V.M. Udhoji, DR, who referred to the Tribunal decision in the case of Anjali Transprints v. Commissioner of Central Excise, Bangalore, 1998 (103) E.L.T. 315 (T) wherein following the Supreme Court decision in the case of East India Commercial Co. Ltd. v.CCE, 1983 (13) E.L.T. 1342 (S.C.) the Tribunal had taken a view that the imposition of redemption fine in lieu of confiscation was justified when the goods had been provisionally released against bank guarantee.

4. We find that the classification has already been settled and it has been held by the Commissioner of Central Excise (Appeals) that the goods were liable for confiscation. Only on the sole ground that the goods had been provisionally released, he has set aside the redemption fine. We consider that the matter is covered by the aforesaid Tribunal decision. The matter has now been finally settled by the Supreme Court decision in West Components Ltd. v. CC, New Delhi, 2000 (115) E.L.T.278 (S.C.). We accordingly set aside the impugned order in appeal to that extent.

5. The adjudicating authority had imposed a redemption fine of Rs. 1,00,000/-. The value of the goods confiscated was Rs. 4,54,238.50. The Commissioner of Central Excise (Appeals) has not gone into the merit of the quantum of the redemption fine. While his observation that no redemption fine could be imposed, is set aside we remand this matter to the jurisdictional Commissioner of Central Excise (Appeals) only on this limited issue of redemption fine, to look into the quantum of redemption fine after giving an opportunity to the respondents to present their case and then pass a speaking appealable order as per law.

6. Thus on this limited question, the appeal is allowed by way of remand.