JaIn Brothers Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-27-2000

Reported in : (2000)(92)LC386Tri(Mum.)bai

Judge : J S Murthy

Appellant : JaIn Brothers

Respondent : Cc

Judgement :

1. In this party's appeal, the relief sought for is set aside the penalty imposed and reduce the redemption fine as per the precedent decisions of the Tribunal, which were brought to the notice of the Commissioner (Appeals) AIRport, Mumbai but were not properly considered. Since the matter is covered, the appeal itself is taken up.

2. The facts in brief are, that the appellant imported professional video equipment i.e. 3 sets of professional monitors for studio use (Sony PVA, 6030 ME), 3 sets of Sony PVM 2130 with the speakers (professional reonitor for studio use) one set of digital time base corrector and one set of video computer graphic system, amiga 3000 with monitor and other accessories totally valued Rs. 3,14,105/- CIF and sought clearance against the replenishment licence dated 29.12.1989 No.P/L/3364134 under flexibility provisions of paragraph 177 of the Import Export Policy of 1988-91. The department was of the view that the consignment had not been imported against the import licence dated 29.12.1989 and the import Policy

applicable would be the policy on the date on which shipment of goods i.e. export import policy AM 1990-93, under which only capital goods not covered by appendices A, 2B and 8 could be imported against flexibility allowed at additional replenishment and special additional licence. The goods imported being professional electronic equipments, are not specified individually anywhere, in any other appendix of Export-Import Policy 1988-91 and were covered Serial 175 of app. 2 part B Export Import Policy 1993. The show cause notice issued by the department to the appellant was challenged in civil application No. 473/91 in Bombay High Court, which in turn vide interim order dated 13.2.1991 permitted clearance of the goods on executing Import Trade Control Bond for 100% of value of the goods, and appellant acted upon it covering the customs duty leviable on the goods. The department was permitted to adjudicate, but not to enforce orders. The Additional Commissioner of Customs on 16.9.1993 passed the original order holding the import of professional electrical equipment covered by serial No. 148 of app. 2-B of the EXIM Policy 1988-91 and also by serial No. 175 of app. 2-B of EXIM policy 1993, and the goods were not covered by replenishment licence obtained by appellant, and it was confiscated with redemption fine of Rs. 1.5 lakhs and imposed personal penalty of Rs. 30,000/-. The appeal preferred against that order by the appellant was dismissed under Section 129(E) of the Customs Act by the Commissioner of Customs (Appeals) for non-compliance of the stay order. The Tribunal in the appeal remanded the matter back to the Commissioner (Appeals) to decide the issue afresh according to law. The Commissioner (Appeals) has dealt with the merits of the case, and upheld the confiscation of goods and reduced the redemption fine from Rs. 1.5 lakhs to Rs. 1,30,000/- and penalty from 30,000/- to 20,000/-. He has considered the decisions of the Tribunal in 1494-1495/92 in C-II/2873/98/WZB dated 8.12.1998 wherein in the identical case upholding the order of the lower authority, reduced the fine and penalty substantially. The reason assigned for reducing the redemption fine and penalty in this case as "considering all the events and facts of the case on the basis of legal pronouncements".

Hence this appeal.Ekta Video and Audio V Centre v. CC, Mumbai and CC Airport in order No.1494-95 Tribunal has reduced the redemption fine to 50,000/- from Rs. 5 lakhs and set aside the penalty. Paragraph 7 to 9 in this order are relevant.

According to that, both prior and subsequent to raising objection against the import of subject goods, Customs authorities have allowed import of similar goods of similar licence, but without any objection on the licence were issued under the same policy. They bear the endorsement of availability of flexibility provision of paragraph 175 of the Policy book. The items imported are identical. The clearance is affected only at Bombay. Action proposed by the lower authority is certainly not called for. The prevailing circumstances deemed justifiable to set aside personal penalty on Audio video centre. No penalty is imposed on Ekta Video, though confiscation order stands. The subsequent clearance provided mitigate circumstances, and the appellant being capital users redemption fine was reduced from Rs. 5 lakhs to Rs. 50,000/-. Another order of the Tribunal in No. 2873/98 dated 18.11.1998 in the case of appellant himself, the order is passed on the consent of both the sides on the same issue and penalty was set aside, redemption fine reduced from Rs. 23 lakhs to Rs. 2.5 lakhs, applying the criteria enumerated in the case of Ekta Video and Audio V Centre under Order No.1494/92 in C/230/90 and order No. 1495/92 in C/236/90. In the light of these orders, it was urged that penalty has to be set aside and the redemption fine has to be reduced to Rs. 1.5 lakhs to Rs. 15,000/-. The Ld. JDR has contended that the case depends upon the facts and circumstances available. The reduction of the redemption fine and imposition of penalty varies from case to case. Discretion has to be exercised in the background of facts of each case.

4. Perused the above 2 orders, and the impugned order in this case as already considered and held in the above paragraphs, the impugned order does not contain any specific reason in reducing the redemption fine and penalty. The reason given is looking to the event, which is too broad a view. The prior and subsequent orders of the Commissioner in allowing import in a similar case is a mitigating circumstance, as held in the orders of the Tribunal, referred above. When the penalty is set aside and redemption fine is reduced substantially to 10% of the original amount, which forms the precedent order, there are no compelling circumstances in this case to come to a different conclusion. So the contention of the appellant, has to be, and is accepted. Hence I pass the following order.

For the reasons discussed above, the appeal is allowed with consequential relief according to law, penalty on the appellant in the impugned order is set aside and the redemption fine is reduced from Rs. 1.5 lakhs to 15,000/-. The stay order is disposed off accordingly.