Avol House Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-10-2000

Reported in : (2000)(69)ECC545

Judge : S T Gowri, G Srinivasan

Appellant : Avol House

Respondent : Commissioner of Customs

Judgement :

1. After having heard the parties on stay application, we are of the view that the appeal itself could be decided and with the consent of both sides, proceed to decide the appeal.

2. This appeal is against the order of the Commissioner imposing penalty under Section 114A of the Act of Rs. 3,53,721 on the appellant.

The reason for which the Commissioner imposed penalty is that appellant took Modvat credit in the course of manufacture of leather garments which was exported under an advance licence scheme. The appellant transferred the import licence obtained as a result of the export by M/s. Luster Chem Corporation which caused import to be made of goods which were accrued due to free clearance under notification 203/92.

3. From the fact as narrated above, there is nothing to show that the provisions of Section 114A are attracted. It is not possible to say whether Modvat credit was in

fact taken. Reliance by the applicant on the certificate of the Asstt. Commissioner, Mod. V, New Delhi dated 3.7.98 does not appear very sound. This certificate says that because the appellant's factory was exempted from requirement of registration as contained in Rule 174, it did not avail of Modvat credit. The provisions of the rules and relevant notification to substantiate this have not been cited before us. However this certificate was prima facie evidence that the appellant did not take Modvat credit. The Commisioner's order does not indicate on what basis he has concluded that he has taken Modvat credit. Even if Modvat credit was taken, we do not see how the provisions of Section 114A are attracted in the case of this appellant. The import was not made by this appellant. The import was made by some other person in terms of licence issued to this appellant. The provision of Section 114A provides for imposition of penalty in cases where there is no evasion of duty. Any such evasion if it took place, was caused not by this appellant but by the person who imported the goods. There is not even a whisper in the impugned order or representative's contention on this issue, though the departmental representative relies on the Commissioner's finding.

4. We are satisfied that there is no case for imposition of penalty and set aside the order imposing penalty and allow the appeal.