

Cc Vs. Shree Electronics

Cc Vs. Shree Electronics

SooperKanoon Citation : sooperkanoon.com/17912

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-22-2000

Reported in : (2000)(93)LC544Tri(Mum.)bai

Judge : S T Gowri, J S Murthy

Appellant : Cc

Respondent : Shree Electronics

Judgement :

1. We have heard the departmental representative on the appeal filed by the department. The respondent is absent and unrepresented despite notice.
2. The ground in the appeal that the Collector's order is contradictory, in that it offers redemption of goods ordered to be absolutely confiscated, has to be accepted. This is what the Collector has said in the operative portion of the order. Since he has fixed specific amount for redemption for the goods, which are confiscated, he intended this option to be given and the words "absolute confiscation" appearing in the operative portion appear to be an error. We therefore direct that his order be treated as one of giving an option to redeem the goods, which he had already confiscated.
3. The departmental representative did not press the ground on valuation. Therefore we do not deal with it.

4. It is not possible to accept the ground in the appeal since it has been established that the importer was non-existent, an option to redeem the goods on fine should not have been given. The Commissioner does not come to a finding that the importer is non-existent. While we agree with the notice issued to the appellant was returned undelivered with remarks that there was no person, that by itself is not conclusive that the importer was non-existent. The importer may have given a wrong address or may have moved away. It also does not necessarily follow that because the importer is shown to be non-existent, the goods must be ordered to be absolutely confiscated. The provisions of Section 125 of the Act have to be applied in deciding whether the goods ought to be redeemed on payment of fine or to be absolutely confiscated. That is the legal position, although as a matter of inconvenience or pragmatism absolute confiscation is ordered where there is No. ownership apparent.

Even if that option is given, there would be no one to exercise it.

5. This ground is in direct contradiction to the next ground that the import is direct, penalty imposable on the importer has to be enhanced.

Penalty cannot be imposed on a non-existent person and there would be a good case for not imposing penalty at all. However on merit we find no reason to interfere so as to enhance the penalty. The appeal is therefore disposed of accordingly.

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