

Commissioner of Cus. Vs. Jaya S. Shetty and Noor Mohd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-01-2000

Reported in : (2000)(120)ELT337TriDel

Appellant : Commissioner of Cus.

Respondent : Jaya S. Shetty and Noor Mohd.

Judgement :

1. These are two appeals filed by the Revenue against the common impugned order dated 21-6-1999 passed by the Commissioner of Customs (Appeals), Chandigarh.

2. Facts of the case in brief are that appellant Shri Noor Mohd. during gulf war came to India from Kuwait on 30-12-1990. He imported one car Model No. Toyota Clessida and crossed to India via Land Customs Station Attari Road (LCS). The car was exempt from Customs duty as per Notification No. 258/90-Cus., dated 23-10-1990 subject to fulfilment of conditions laid down therein. He executed a bond at LCS. The condition of the bond was that he will produce the Customs clearance permit for legal import of the car within two weeks. According to the department the appellant could not produce Customs clearance permit (CCP). On a specific information special investigation and intelligence branch of Customs Ballard Estate, Bombay seized the car from the premises of appellant No. 2, on a reasonable belief that the appellant No. 1 had not complied with the provisions of notification. The adjudicating authority confiscated the car and imposed penalty on appellant No. 1 and 2. Aggrieved by the said order the party has filed an appeal.

2. On considering the facts and circumstances, the Commissioner (Appeals) decided the appeal in favour of the party observing that "I have considered the matter. It is apparent that the person left Iraq in distress, during Gulf war and travelled by road till the Attari Border in India by force of circumstances. Appellant No. 1 imported a car without Customs duty availing the benefit of Notification No.258/90-Cus., dated 23-10-1990. One of the conditions for availing the benefit of notification supra, was that the importer shall not part with or sale the car within a period of five years. Appellant executed a GPA in favour of appellant No. 2 for maintenance and safety of the car as he had no proper place to park it. One of the conditions in the notification supra was that the appellant No. 1 will inform the Customs authorities having jurisdiction over the place where the importer was going to reside in India. The appellant No. 1 duly informed the Mumbai Customs authorities about his residential address. I understand that merely by executing GPA in favour of somebody does not tantamount to sale. Moreover, the car was physically present for inspection by the Customs authorities of the jurisdiction".

3. Arguing for the Revenue Shri R.D. Negi, Id. JDR submitted that to avail the benefit of Notification No. 258/90 the conditions therein are to be fulfilled. In the instant case neither the party has produced the CCP within the stipulated time nor complied with the other conditions inasmuch as the party has parted with the car by executing the GPA in favour of the second appellant. It was the contention on behalf of the respondents that the party had made requests to obtain CCP from DGFT. It was informed that his case come under the provisions of Public Notice No, 197-ITC(PN) 90-93, dated 16-8-1991 wherein requirement of CCP for importation was dispensed with. Id. Counsel submitted that the only point to be considered in this case is whether GPA executed in favour of the appellant No. 2 for maintenance and safety of the Car means to sale or to part with. He also drew my attention to the relevant copy of the GPA. Emphatically, it was argued on behalf of the Revenue since the car has been used by the second appellant and same was in the possession of the second appellant, it amounts to part with and accordingly the party is not entitled to benefit of exemption in terms of Notification No. 258/90-Customs, dated 23-10-1990.

4. On a careful consideration of the submissions made by both the sides and perusal of the records, I find that execution of GPA in favour of the second appellant does not amount to sale or part with. I find that the point at issue has been properly analysed by the Commissioner (Appeals) in para 3 of his order. I do not find any infirmity in the impugned order and in the result, the appeal filed by the department is hereby dismissed.

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