D. Balkrishna and Co. Vs. Commissioner of Customs

D. Balkrishna and Co. Vs. Commissioner of Customs

SooperKanoon Citation : sooperkanoon.com/18944

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-17-2000

Reported in : (2000)(122)ELT631Tri(Mum.)bai

Appellant : D. Balkrishna and Co.

Respondent : Commissioner of Customs

Judgement :

1. On hearing Shri H.R. Shetty, advocate, on the stay application and on hearing Shri KM. Patwari, JDR, for the revenue, it appeared to us that on a short point, the appeal itselt could be disposed of. We do so by granting waiver of pre-deposit of the differential duty confirmed not covered by the revenue deposit.

2. The appellants imported Gambier in 10 M.T. lots and declared value of 1700 US$ PMT in five separate consignments. The Assistant Commissioner after giving due notice and after hearing the importers, enhanced the price to 2500 US$ PMT in two consignments and 2500 US$ PMT in the remaining consignment confirming in the process demand to the extent of Rs. 1,93,989/-. The importers filed an appeal. The Commissioner (Appeals) disposed of their submissions as follows :- "1 have carefully gone through the records of the case and heard the appellant. I observe that the Group has considered the value for assessment purposes on the basis of contemporary import and accordingly less charge demand was confirmed and issued to the appellant. The said enhancement of value, therefore to me appears proper. Accordingly the appeal accordingly is rejected." 3. We find that the Assistant Commissioner had relied upon evidence in the form of valuation of

contemporaneous imports citing the relevant case law. Before the Commissioner (Appeals) in their appeal memorandum the importers had challenged this finding suggesting that the Assistant Commissioner had misinterpreted the rule. In the appeal memorandum certain case laws were cited in their support.

4. In the face of the submissions what was required of the learned Commissioner was to state the case, discuss the law cited, apply it to the evidence relied upon by the department and to issue his findings.

The findings reproduced above can hardly be called a speaking order. In passing this order the Commissioner has not done what was expected of him. This order therefore does not survive and is set aside. The appeal is allowed. The proceedings are remitted back to the jurisdictional Commissioner (Appeals). He shall give due notice to the importers, once again hear them and then issue on order dealing with all the submissions made before him in giving his findings.