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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Hyderabad

Decided On : Aug-31-2000

Reported in : (2000)(93)LC469Tri(Hyd.)erabad

Judge : S Peeran

Appellant : Antiquity

Respondent : Cc

Judgement :

1. This appeal arises from Order-in-Appeal No. 18/99 (H-II) Cus. dated 23.8.1999 passed by Commissioner (Appeals) Hyderabad holding that the seized Tanjore paintings admitted to be exported by the appellants by Shipping Bill 904/96 dated 27.4.1996 under the provisions of the Clause (d) of 113 of Customs Act was in contravention of the provisions of Antiquities and Art Treasures Act, 1972. He has upheld the charges in the show cause notice dated 7.2.1998 that the item is Antiques and in terms of the said Act, it cannot be exported. The findings given by him in para 5 is reproduced below: The main thrust of the augments of the appellants in the appeal is questioning the validity of the report No. F. 14-4-96-Ant. dated 24.7.1997 of the Director General, Government of India, Archaeological Survey of India, Janpath, New Delhi for variety of reasons as mentioned in the appeal memorandum. In the said report of the Archaeological Survey of India, the subject four Tanjore paintings have been declared as Antiquity. Archaeological Survey of India is a specialised Governmental body for the purpose and the Deputy Commissioner has no option but to be guided by their expert opinion

declaring the subject four Tanjore paintings as antiquity.

Therefore, the impugned order passed by the Deputy Commissioner cannot be faulted. If the appellants have any grouse against the said report of the Director General, Archaeological Survey of India, New Delhi, they are at liberty to take up the matter with him for re-examination of the case. Nothing of the sort has been done by them. I do not find any infirmity in the impugned order passed by the Deputy Commissioner, which is correct both on facts and in law.

The impugned order is sustainable.

2. The original authority's (Deputy Commissioner/Customs) is also brief and the findings given by him are also reproduced as under: I have gone through the allegations of the show cause notice, the facts of the case and the representation oral and written - made by the exporter so far. The only issue to be decided in this case is whether the subject four paintings were antiques in terms of the Antiquity and Art Treasures Act, 1972 and were, therefore, prohibited for export. During the hearing offered to the exporter, one of his argument was that it could not be decided just by visual examination whether the painting was really antique. The argument is fair and logical. It was exactly for this reason that the expert opinion of the Government authority on this subject, namely, the Archaeological Survey of India was called.

Although the first opinion of the ASI was only prima-facie, this Department further referred the subject paintings for a detailed examination by an expert panel constituted by the ASI. Their final opinion, after a detailed examination has since been obtained and is on record. The letter from the ASI F. No. 14-4/96 ANT dt. 24.7.1997 conclusively communicates after a detailed examination, that the subject four paintings under export have been declared by the ASI as antiques finally. Thus, the expert opinion, specialized Governmental body such as ASI having been obtained in the case, I rely upon the expert opinion and conclude that the subject paintings under export were really antiques. There is nothing on record to show that the exporter had ever requested to be a party to the detailed examination carried out by the ASI, although they had an opportunity to do so.

In view of the above findings I confiscate the subject four paintings attempted to be exported by the said exporter under the provisions of the Clause (d) of Section 113 of the Customs Act, 1962. I also impose, under the provisions of Section 114 of the Act, penalty of Rs. 30,000/- on the exporter and order him to pay it forthwith.

3. Ld. Consultant J. Ramakrishnan points out that both the orders are not speaking orders and the findings recorded by Commissioner (Appeals) that if at all the appellants had a grouse against the report of DG, Archaeological Survey, New Delhi, they had the liberty to take up the matter with him for re-examine the case is totally an incorrect finding. It is his submission that they have produced enormous evidence to show that the item was prepared by the appellants and they had produced video cassettes showing the process of making the paintings.

It is his submission that the appellants is a Doctor by profession and an ENT Surgeon attached to a hospital. He had no intention of exporting antiques nor they were indulging in such activity. They were all general paintings which were of 1993 make and as per Section 2(1) of Antiquities and Art Treasures Act, the item has to be more than 100 years old. He submits that it is the burden to show that the item is more than 100 years old has not been discharged by the department. He further submitted that the reports of Director-General, Archaeological Survey of India was not furnished to them and they were also not offered for cross-examination. He points out to the copy they have obtained subsequently which is at page No. 66 of the file and points out from the said report that there is no clear declaration in terms of the definition in the said Act. There is no carbon test carried out to find out the age of the paintings and therefore, the report is assailable and it was for the original authority to have granted the appellants an opportunity of cross-examining the signatory of the report to show that the said report is not in terms of the relevant provisions of the Act. The appellants have also produced enormous evidence and the said evidence have not been taken into consideration and hence both the orders are not speaking orders. Therefore, the matter is required to be remanded for de novo consideration. He submits that the matter is pending for too long and therefore prays for a direction for re-adjudication which should be time bound. Otherwise, the appellants would be put to severe prejudice and injury in the matter.

4. Ld. D.R. points out that the report was in terms of the test carried out by the experts and the said report is conclusive of the findings that the seized goods were Antiques in terms of the Act. The appellants contention that they are not Antiques and that they have not chosen to cross-examine the experts and therefore no infirmity in the order and absolute confiscation is sustainable. The appellant may be a doctor, but he is doing business of exporting Antiques by a firm M/s.

Antiquity, Secunderabad, therefore his plea that he is a doctor and innocent of not exporting antiques cannot be taken on face value. Ld.

D.R. also puts to strict rule the submission made by Ld. Consultant that Carbon Test is required to be done for a 100 years old painting.

He submits that as per his knowledge, Carbon test is required to be done only to the item which are of thousand year old and not 100 years.

5. Ld. Consultant countering the submission of DR, submits that fact of appellant being a doctor and having a firm cannot influence the authorities to hold that he was indulging in export of Antiques. He may be having a firm by name M/s. Antiquity but it did not imply that he was indulging in exporting Antiques out of India. He submits that this was his first export and the items were not antiques at all. He submits that carbon test are carried out to know the age of the item and it need not be of a million years old. He submits that all these aspects are matters of evidence and all such evidences have not been looked into and the orders not being speaking orders cannot be sustained. He submits that the appellants have also produced certificates from Tamil Nadu Art Emporium dated 26.8.1998 certifying the item to be not antique. There are other evidences also on record. He also points out that the appellants have purchased the paintings from another person through an invoice and it has not been proved that the invoice is bogus invoice and that the item is an antique in terms of the provisions of Antiquities and Art Treasures Act, 1972. Ld. Consultant also reads out the statement recorded from the appellant wherein he has clearly denied producing antiques and dealing in antiques and as such there are no admissions made by the appellant and all other witnesses with regard to the item being an antique in terms of the record available.

6. On a careful consideration of the submission, I see a lot of force in the submission made by Ld. Consultant in the matter. On a perusal of both the orders, it is very clear that the orders are not speaking orders. The Commissioner's finding that the report of the DG, Archaeological Survey of India was required to have been challenged before the said DG is not a correct finding at all. It is the department who has relied on the expert opinion and the expert who has given the opinion is required to be produced for cross-examination which is a fundamental principle of natural justice. It is well laid that no evidence can be taken behind the back of a person and used without granting a copy of the evidence to cross-examine. In the present case, there is clear violation of principles of natural justice. Further, the evidence produced by the appellants have also not been analysed and not been looked into. The entire matter should have been examined within the terms of definition of Antiques under Section 2(1) of the Antiquities and Art Treasures Act 1972. Both the authorities have not examined the charging section of the said Act to examine the expert opinion.

7. On a prima facie reading of the report also, it is not clear as to whether the item satisfied the definition of the Act. Therefore, it is ordered that a fresh examination of the seized goods is required to be done by the experts and they are required to examine the item in terms of the Section mentioned above and give a clear finding after carrying out necessary scientific tests to find out the item to be an antique or not. Copy of such test report should be given to the appellants to enable them to cross-examine the experts before the original authority.

The appellants' evidence that the item was prepared in 1993 is also required to be considered. The original authority shall carry out the de novo consideration and complete the same expeditiously within a period of 3 months from the date of receipt of the order. The prayer of the consultant that the appellants should also participate in the examination and test of the items is also a valid point. They may be permitted to be present at the time of carrying out the tests. The matter is remanded to the original authority for de novo consideration.

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