

Anil Associates Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Sep-20-2000

Reported in : (2000)(93)LC443Tri(Bang.)alore

Judge : S Peeran, S T S.S.

Appellant : Anil Associates

Respondent : Cce

Judgement :

1. The Hon'ble High Court of Karnataka vide order dt. 18.7.2000 in Civil Petition No. 1116/99 has directed this Tribunal to refer the following questions by drawing up a statement in terms of Section 130 of the Customs Act to decide the same: 1. Whether the Hon'ble Tribunal is correct in holding that the importation of Aniseeds by the appellants under special import licence is not permissible and not as per law when Aniseeds are cleared under special import licence in other cases during the same period in question.
2. Whether the Hon'ble Tribunal is correct in holding the non-acceptance of value of aniseeds imported by the appellant is correct when the same lower authority accepted the value adopted by Madras Custom in the case of Mace imported by the appellant vide the same bill of lading and bill of entry.
3. Whether the Hon'ble Tribunal is correct in law in not considering the value of the contemporaneous imports of same goods while determining the quantum of

redemption fine and penalty as per the well settled law when the documents in this regard can be obtained from the Custom House.

4. Whether, the Hon'ble Tribunal is correct in law in holding the imposition of redemption fine and penalty is correct by taking into consideration of market value which is existing after a considerable gap of nearly one and half years, of not similar goods but nearly similar goods.

2. The appellants had filed an appeal against Order-in-Appeal No. 25/97 dated 7.4.1997 challenging the correctness of the same by which the Commissioner had held that the Aniseeds were confiscable in terms of Order-in-Original passed by Addl. Commissioner under Section III(d) of the Customs Act. However, same was granted redemption on payment of fine of Rs. 7 lakhs and penalty of Rs. 50,000/-. The Commissioner confirmed the order without any modification. He took a view that the same was not permissible for import in terms of Import Export Policy 1992-97 as amended and that it was classifiable under ITC Policy heading 09091001 as a restricted item. He, therefore, held that import was in contravention of the provision of Section 3(2) and 3(3) of Foreign Trade (D & R) Act, 1992 and as per para 156A of EXIM Policy 1992-1997.

3. The Tribunal on final consideration of the appellants' appeal confirmed the OIA passed by Commissioner (Appeals), however it reduced the redemption fine to Rs. 4 lakhs and penalty to Rs. 35,000/- in terms of Final Order No. 3293/97 dated 9.12.1997.

4. Appellants filed reference application before the Tribunal for referring questions as already drawn by the High Court of Karnataka for determining the same. The Tribunal did not accept the prayer and rejected the reference application by Ref. Order No. 34/99 dated 14.6.1999. Against the said order, appellants had filed Civil Petition No. 1116/99 dated 18.7.2000 under Section 130(3) of the Customs Act before High Court of Karnataka seeking for drawing statement of facts from the Tribunal to determine the question as noted above. The Hon'ble High Court has been pleased to give directions to CEGAT to refer the above questions.

5. Ld. Counsel Shri S. Raghu for appellants has filed four set of paper book for referring the matter to Hon'ble High Court.

6. Ld. DR Shri S. Kannan submits that the matter is required to be referred to the High Court in terms of directions given.

7. In view of directions received, this statement is drawn and Registry is directed to refer this matter along with Paper Book to the Hon'ble High Court of Karnataka for answering the questions already drawn in terms of Section 130(3) of the Customs Act, 1962. Reference application allowed.

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