Ashok Alimchandani Vs. Development Commissioner

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-12-1984

Reported in : (1985)(20)ELT87Tri(Mum.)bai

Appellant : Ashok Alimchandani

Respondent : Development Commissioner

Judgement :

1.Shri Kadiani at the outset submitted that the applicant's appeal among other things involves a question of valuation and as such outside the purview of the Regional Bench. When questioned by the Bench as to whether the valuation was for the purposes of assessment, Shri Kadiani submitted that it was not for the purposes of assessment but it was for the purposes of imposing penalty. He contended that the penalty should have a relation to the value of the goods and therefore, this appeal cannot be heard by the Regional Bench.

2. On merit, Shri Kadiani submitted that the applicant has a fair chance of success in the appeal. The only allegation against him was that he assisted in the removal of the goods. He was not a beneficiary.

He further submitted that the appellant earns a monthly salary of Rs. 1350/-. He has a wife, two children aged parents and one brother and sister to support within the income. Therefore, he would not have means to deposit the penalty amount of Rs. 25,000/- imposed on him. It would cause great hardship to him amounting to denial of his appeal being heard if his request for dispensation of pre-deposit is not granted.

3. Shri Pattekar for the Respondent Collector submitted that he has no instructions regarding the income or the financial sources of the applicant. Therefore, he would not be in a position to submit anything regarding financial position but he requested that the interests of the revenue may be safeguarded.

4. Considered the submissions made on both sides. The preliminary objection raised regarding the jurisdiction of this Bench to hear the appeal is rejected. The appellant had been imposed with a penalty of Rs. 25,000/-and he did not claim the goods involved. Even if one accepts the contention of Shri Kadiani that the quantum of penalty to be imposed depends on the value of the goods, that does not preclude the Regional Bench from hearing the appeal. What is excluded from the jurisdiction of the Regional Bench is an appeal which involves a question of valuation for the purposes of assessment. In the instant case, such a question is not involved.

5. Now, coming to the undue hardship the applicant had stated that he earns a monthly income of Rs. 1,350/-. He has a wife, two children, aged parents, one brother and sister to support. He has not given the income of his parents or his brother and sister. It might cause some hardship if the applicant is called upon to deposit the entire amount of Rs. 25,000/-.

6. The applicant's obligation to maintain his wife and children and aged parents is both moral and legal. His obligation to maintain his sister and brother is only moral. Unfortunately for the applicant the law places one more legal obligation on him before his appeal could be heard on merit. That being, to deposit the duty demanded or penalty levied see Section 129E of the Customs Act. It is true that section vests discretion in the Tribunal to dispense with the pre-deposit of duty demanded or penalty levied if the Tribunal is of opinion that the deposit of duty demanded or penalty levied would cause undue hardship to the appellant. This discretion has to be exercised judicially and not arbitrarily or capriciously. The Tribunal is also enjoined to safeguard the interests of the Revenue.

7. After balancing the various obligations of the appellant and bearing in mind the interests of the Revenue I grant stay of the recovery and dispense with the pre-deposit of Rs. 25,000/-, the penalty levied on the applicant, on his depositing in cash a sum of Rs. 5,000/- within 8 weeks from this date. He shall report compliance within 9 weeks failing which his appeal is liable to be rejected.