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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-20-2000

Reported in : (2000)(93)LC451Tri(Mum.)bai

Judge : J T J.H.

Appellant : Cc (P)

Respondent : Agarwal Traders and anr.

Judgement :

1. These two appeals filed by the Revenue are against the common order made by the Commissioner (Appeals). The two respondents have also filed cross objections. These are being disposed of together by this common order.

2. The Customs seized from the premises of the respondents ball bearings of foreign make. The respondents claimed to have purchased the goods from a particular firm. Investigations showed that the firm who had sold the goods was not in existence. It was alleged by the Customs that in these circumstances, the goods were smuggled into India. The Addl. Collector of Customs ordered confiscation of the goods and imposed penalty. The Commissioner (A) discussed the available case laws and gave the following findings: I find that the ball and roller bearings imported are not restricted or prohibited items that they are under OGL and can be freely imported. The department has never alleged that the impugned goods are figuring in the negative list. Further, the allegation that the goods are smuggled, does not carry any conviction as the department passed its order on a single fact

that the sellers are a fictitious firm. The department has not produced any independent evidence at all to substantiate this allegation. In view of the clear cut decisions on the question of burden of proof in various orders of the Tribunal/Court cited above, I have no hesitation in considering that the impugned order is not sustainable under the Law. The impugned order is therefore, set aside with consequential relief to the appellants.

3. I have heard Shri Choubey for the Revenue and Shri S.N. Kantawalla appearing along with Shri S.B. Patil for the respondents.

4. In identical circumstances, the Tribunal in the following judgements had held that ball bearing was not liable to confiscation under Section 111(d) of the Act : (1) 1999 (85) ECR 85 Ravi Mittal v. CC, New Delhi (2) Kulbhushan Jain v. CC, Delhi.

5. The belief of the Commissioner having been established by such judgements of the Tribunal, his order sustains and the appeals are dismissed.

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