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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-16-2001

Appellant : Emjay Enterprises

Respondent : Commissioner of Customs, Cochin

Judgement :
2. The counsel for the appellant does not question the finding of the Commissioner (Appeals) that the import licences which were produced for clearance did not cover the amoxycillin trihydrate imported by the appellant. He says that the matter has been settled by the judgement of the Madras High Court in the writ petition filed against the order of the Tribunal. The High Court declined to interfere with the finding of the Tribunal, on an appeal by the department against the Commissioner's order, that the licences were not valid for the goods imported. The matter thereafter went to the Commissioner for determination of fine and penalty. The Commissioner has determined a fine of Rs. 5.70 lakhs for redeeming the goods valued at Rs.18.62 lakhs, and penalty to Rs 1.00 lakh. He has found that the bona fides of the appellant had been established, and has relied upon the Supreme Court's judgement in Akbar Badruddin Jiwani vs Union of India 1990 (47) ELT 161.

3. The counsel for the appellant contends that on these facts, there ought to be no penalty on it, and the redemption fine, if at all, ought to be nominal. He relies upon the ratio of the Supreme Court's judgement cited above. He also points out that the review ordered by the Board itself was only sought determination of the

question as to whether the licences were valid to cover the import, and did not propose confiscation of the goods, or imposition of penalty.

4. The departmental representative contends the Commissioner's order is reasonable, and has already taken into account the bona fides of the appellant. He also points out that the Tribunal has found the goods liable to confiscation and the appellant liable to penalty.

5. The bona fides of the appellants are not in doubt. The initial order of the Collector held that the goods were covered by licence. In his present order, the Commissioner acknowledges the bona fides of the importer, saying "Thee is nothing on record to show that the importer cleared the goods with an intention to violate the import policy." Thus, the department had taken two diametrically opposite views on the validity of the licences. This fact, and the specific finding of the commissioner (Appeal) on the absence of an intention by the appellant to violate the policy call, in my view, for greater leniency than has been extended by him. I therefore reduce the redemption fine and penalty to Rs 25,000/- each.