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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-26-2001

Appellant : Kothari and Sons

Respondent : Commissioner of Customs, Mumbai

Judgement :

1. This appeal is against the order of the Commissioner suspending, by his order dated 17.5.2000, the Custom House Agent's licence issued to the appellant.

2. The reason given in the order for suspension of licence is this. The appellant was engaged by Mohammed Sajid Ibrahim for clearance of the baggage imported Purshotham Annaldasula. Ibrahim signed the baggage declaration form filed in pursuance of a letter of authority signed by Annaldasula. The declaration form was for old and used clothes and blankets valued at Rs 1400/-, electronic items valued at Rs 4700/- and brick game at Rs. 1500/-. Examination of the baggage disclosed the presence in it of 10 mobile phones valued at Rs. 60,000/-. The department therefore concluded form these facts that the appellant did not have sufficient authority from the passenger to clear the baggage.

3. The licence, as we have said, was suspended by suspended by order dated 17.5.2000 and continue to be under suspension as of to day. The notice under the Customs House Regulations proposing cancellation of the licence was issued in November 2000. It is stated that the reply to this notice has not yet been filed because of the death of the proprietor on 30.11.2000. This explanation is not easy to accept, since four months has elapsed from the date of the death of the

proprietor.

However, the baggage was examined on 3.11.1998 and the presence of the mobile phones came to light then. Whey the department waited for a year and six months to suspend the licence is not known. If the appellant's functioning from November 1998 to May 2000 could not pose any danger to the department, we do not see how from that date it become so dangerous that immediate suspension was called for. Having regard to this fact, and the prima facie fact that no conscious involvement of the appellant appears to be present in the smuggling, we consider that this was not a case where the provisions of Regulation 21 (2) of the Custom House Regulations could have been applied and accordingly revoked the suspension. We however make it clear that the department is not to be bound by our prima facie view in coming to its conclusion as to culpability of the appellant (a alleged in notice issued to it) and the enquiry officer and the Commissioner should take their decision independently.