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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-26-1985

Reported in : (1985)(0)LC716Tri(Delhi)

Judge : D Lal, M G Murthy, M Santhanam

Appellant : Balani and Co.

Respondent : Collector of Customs

Judgement :

1. Originally referred as a Revision Application before the Central Government, on transfer to the Tribunal, the matter is being treated as an Appeal. The appeal is directed against order dated 20th January, 1979, passed by the Appellate Collector of Customs, Bombay.

2. Shri Krishnamurthy, learned Consultant for the Appellants has briefly narrated the facts of the case. In this case the importation originally was by the State Trading Corporation thereinafter referred to as the Corporation) who are a canalizing agency for the various goods. The Corporation sold the said goods on the high seas to M/s.

Takandas H. Kataria. After a lapse of several months, the Custom House issued a notice of demand under Section 28 of the Customs Act, 1962 (hereinafter referred to as the Act) to the Corporation calling upon them to pay duty allegedly short-levied amounting to Rs. 31,199.23. A copy of this notice was forwarded by the

Custom House to the Appellants in their capacity as Custom House Agents. The Corporation informed the Custom House that they had merely acted as a canalizing agency and the goods in question were in Saw imported by M/s. T.H. Kataria. The Corporation suggested to the Custom House to approach the importer of the goods for recovery of the duty sad to have been short collected.

Shri Krishnamurthy submitted that although the notice of demand was endorsed to the Appellants, at no stage were the Appellants asked to make deposit of the duty short-levied. The Appellants were not aware whether the duty was in fact short-levied and if so whether the same was recovered from the importer, viz. M/s. T.H. Kataria. It was also not known to the Appellants whether M/s. T.H. Kataria had filed separate proceedings before the Customs authorities in connection with the above-mentioned short-levy. Shri Krishnamurthy invited our attention to proviso (2) to Section 147(3) of the Act which provides that in the event of failure on the part of the Customs authorities to recover short levies from the importer/exporter, they can proceed to recover the same from the Custom House Agent, who had acted on behalf of the importer/exporter.

3. We have heard Shri Krishnamurthy and also gone through the records.

Shri Krishnamurthy has raised several pertinent issues but unfortunately the order of the learned Appellate Collector does not deal with any one of these. The order of the Appellate Collector is also silent on the point as to who is the real importer in the present case and whether the appellants were called upon to pay the short-levied duty from the Appellants after they (the Custom House) had failed to realise the same from the importers. The provisions of the Jaw are very clear on this point. Steps to recover the duty short-levied can be initiated against the importer only if the Customs authorities fail to recover the same from the importer.

4. From the narration of the facts given by the learned Consultant, it appears to us that so far the Custom House has not initiated any proceedings against the Appellants for recovery of the short-levy. All that has been done so far is that a copy of the notice Under Section 28 of the Act was endorsed to the Appellants. In this view of the matter, it would appear to us that the, action on the part of the Appellants to prefer an appeal before the Appellate Collector of Customs was

premature. On the same reasoning, the present Appeal is also premature.

The Appellants will have cause of action to seek legal redress before the Appellate authorities only when they are called upon to pay the short-levy. This has not so far taken place. In the result the pre sent appeal (and also the appeal filed before the Appellate Collector) is infructuous and misconceived. It is dismissed accordingly.

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