Dynamic Global Link Vs. Commissioner of Customs, Nhava

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SooperKanoon Citation : sooperkanoon.com/25826

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-20-2001

Reported in : (2002)(149)ELT583Tri(Mum.)bai

Appellant : Dynamic Global Link

Respondent : Commissioner of Customs, Nhava

Judgement :

1. The appeal is against the order of the Commissioner finding that the processed pulses rendered for export by the appellant were liable to confiscation under Clause (d) of Section 113 of the Act, and permitting to be redeemed on payment of fine of Rs. 2.50 lakhs.

2. The departmental representative agrees that the export of moong dal, which is under consideration, was not prohibited or restricted. It did not require a licence from any authority of government. Nor does the commissioner find this to be the requirement. He finds the export to be unauthorised only for the reason that the applicant sought to export the goods, as in fulfilment of the obligation required for an advance licence, contrary to a condition subject to which the licence was issued, that import must take it before export can be made.

3. If the export was not in accordance with the conditions specified in that licence, the Commissioner would be justified in concluding, as he has, that the export could not be counted towards the fulfilment of the obligation imposed on the importer. It is, however, a different thing to say that because of this fact, the export

of the goods itself becomes prohibited. If the export was not otherwise prohibited, it does not become prohibited only because of the failure by the importer to abide by the condition in a particular import licence.

4. I therefore allow the appeal to the extent that the confiscation of the goods and penalty imposed on the appellant are set aside.

Consequential relief.