

Esquire Electronics Vs. Commissioner of Customs, West

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Calcutta

Decided On : Nov-01-2001

Reported in : (2002)(141)ELT103Tri(Kol.)kata

Appellant : Esquire Electronics

Respondent : Commissioner of Customs, West

Judgement :

1. After dispensing with the condition of predeposit of penalty of Rs. 5,000/-, I take up the appeal itself the consent of both the sides.
2. Vide the impugned orders, the lower authorities have absolutely confiscated 17 pcs. of Cordless Phone, 25 pcs. of Calculators and 1 pcs. of Cordless Phone Battery totally valued at Rs. 28,320/-. The said goods were seized from the shop premises of the appellants on the belief that the same were smuggled. During the course of adjudication, the appellanta produced one baggage receipt dated 25.7.96 issued in the name of Mr. Wakil Ahmed showing import of 105 pcs. of Digital Calculator along with the other goods. It was the appellants' contention that he has purchased 25 pcs. of Calculator from the said person who had paid duty on the Calculator. As regards the Cordless Phone, the appellants produced on record materials showing that such imported telephones are available in India, in abundance and are being marketed by the said foreign Companies.
3. The above contention of the appellants did not find favour with the Assistant Commissioner and with the Commissioner (Appeals).

4. Shri Aftab Ahmed, Id. Advocate appearing for the appellants submits that Cordless Phone are non-notified items under the provisions of Section 123 of the Customs Act. They are also available in abundance in India and are being marketed under the brand name of the foreign manufacturers. There is no evidence to show that the said Cordless phone have been imported illegally into India. As regards the Calculator, he submits that he had produced a baggage receipt which has not been verified by the Customs Authorities. They have simply dismissed the said baggage receipt on the ground that the description given in the receipt is not in conformity with the description of the goods and the importer is also different. He submits that the said stand of the Revenue is not justified inasmuch as the said baggage receipt clearly shows that the calculators have been cleared after the payment of duty.

5. Shri A.K. Mondal, Id. JDR opposes the prayer for allowing the appeal.

6. I have considered the submissions made from both the sides and have gone through the impugned orders. As regards the Cordless phones are concerned, I agree with the Id. Advocate that the same being non-notified items under the provisions of Section 123 of the Customs Act, the onus to prove their smuggled character is on the Revenue.

There is no evidence on record to show that the said Cordless phones, which incidentally are freely available in India and are being marketable as is clear from the advertisement placed on record, have been imported illegally into India.

7. As regards the calculators, I find that the appellant has placed on record one baggage receipt showing payment of duty on Digital Calculator by one Mr. Wakil Ahmed at Calcutta. No efforts have been made by the Revenue to get the baggage receipt verified from the Customs, or to get in touch with the said Mr. Wakil Ahmed of Calcutta whose complete address is given in the baggage receipt to verify the factum of sale of Calculators to the appellants. I also note that in the said baggage receipt, the goods have been mentioned only as Digital Calculator without any details of model number or brand name etc.. In these circumstances when the Customs authorities at the Airport are themselves not giving the detailed description of the goods in the baggage receipt, it is not fair on the part of the

adjudicating officer to dismiss the said baggage receipt on the ground that no details have been mentioned in the baggage receipt showing their connection with the seized goods. As such in view of the foregoing, I find that no merits in the impugned orders passed by the authorities below. Accordingly, I set aside the impugned order and allow the appeal with the consequential relief to the appellants.

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