indo Jave and Co. Vs. Cc

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SooperKanoon Citation : sooperkanoon.com/27452

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-04-2002

Reported in : (2002)(105)LC765Tri(Mum.)bai

Judge : S T Gowri

Appellant : indo Jave and Co.

Respondent : Cc

Judgement :

1. The appellant tendered for export a consignment of goods under a claim for drawback. The examination by the departmental officers led them to conclude that the goods were wrongly declared with a view to obtaining drawback greater than what that the exporter was entitled to.

The goods were seized. The importer, having waived issue of written notice, was heard by the Deputy Collector of Customs, who passed orders confiscating the goods with an option to redeem them on payment of fine and imposing a penalty on the exporter.

2. The Commissioner appealed this order to the Commissioner (Appeals) apparently on the ground that the quantum of fine and penalty were insufficient. The Commissioner (Appeals) accepted the appeal, and remanded the matter to the Deputy Collector of Customs for reassessment of fine and imposition of personal penalty. Hence this appeal.

3. The contention of the counsel for the appeal is that the Commissioner (Appeals) had not advanced sufficient reasons for sending the matter back for readjudication. He further contended that the Deputy Collector has already determined a level of fine and penalty commensurate with the offence.

4. The drawback claimed was Rs. 66,579/-, whereas according to the department, the draw back that is payable was Rs. 42,800/-. Section 114 of the Act provides for imposition of a penalty in such cases not exceeding five time of the draw back claim. Section 125 of the Act provides for imposition of redemption fine not exceeding the market price of the goods confiscated. The fact that the Deputy Collector, while passing the order, did not accept the submission of the exporter that the declaration was due to genuine error does not by itself lead to the conclusion that he has considered all the aspects. In his order, the Deputy Collector does not give a reason for a particular level of penalty or redemption fine. If the matter is to be sent back to him for doing so and determining the appropriate fine, I see no reason why the Commissioner (Appeals) could not have correctly passed her order. I add only one qualification that, in determining the quantum of redemption fine and penalty, the adjudicating authority has to proceed with an open mind having regard to the facts of the case and the provisions of law and should not feel himself bound by any opinion that the Commissioner (Appeals) made about the inadequacy. Subject to this modification, the appeal is dismissed.