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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-13-2002

Reported in : (2002)(142)ELT150TriDel

Judge : K Kumar

Appellant : Krishan Kumar

Respondent : Commissioner of Customs, New

Judgement :

1. This is an appeal against the Order-in-Appeal No. HKS (638) A & R/2001, dated 7-8-2001 passed by the Commissioner of Customs (Appeals), New Delhi upholding the order of the adjudicating authority by absolutely confiscating 5 bales of taffeta cloth of assorted size; measuring 530 mtrs., collectively valued at Rs. 21,200/-, seized vide panchnama dated 31-7-99 under Section 111(d) of the Customs Act, 1962 and a penalty of Rs. 20,000/- on Shri Krishan Kumar, Proprietor of M/s.

Ram Chand Mahajan & Soils, under Section 112 of the said Act.

2. Shri M. Ganesan, Advocate appearing on behalf of the appellant has contended that the goods measuring 898.90 mtrs. were purchased by the appellant against Bill No. 712, dated 15-7-99 for an amount of Rs. 35,956/-and a cheque No. 124281, dated 28-7-99 was issued therefor; that the provisions of Section 123 of the Act could be invoked against the appellant only after the Department

discharges the initial burden cast upon them under the law to prove its foreign origin by adducing unimpeachable evidence; that the appellant had produced before the Customs Officers at the spot the original Bill No. 712, dated 15-7-99 showing the legal acquisition of the goods from M/s. V.K. Jain & Sons, 218, Gulabi Bagh, Delhi as well as making payment to them vide Cheque No, 124281, dated 28-7-99; that necessary enquiries from the seller of the goods i.e. M/s. V.K. Jain & Sons have not been made; that the penalty imposed is on the higher side being almost equivalent to 100% of the goods which is not warranted; that the appellant has arranged to file an affidavit from the proprietor of M/s. V.K. Jain & Sons i.e.

Vinod Jain who has stated that they are the regular traders of various kinds of synthetic fabrics of foreign origin; that he has sold 898.90 mtrs. of synthetic fabrics for Rs. 35,956/- under Bill No. 712, dated 15-7-99 to M/s. Ram Chand Mahajan & Sons, and also received payment vide Cheque No. 124281 for a sum of Rs. 35,500/-; that the above transaction was made in regular course of business. In support of his contentions, the learned advocate has relied on the following decisions: 3. Shri A.S. Bedi, learned SDR has appeared on behalf of the Revenue.

The learned SDR at the very outset pointed out that the facts in the cases cited by the learned Advocate are different and the same do not relate to goods which are notified and as such the same are not applicable in the present case; that the appellant in his statement recorded on 31-7-99 has admitted the recovery of 5 bales of taffeta cloth of foreign origin measuring 530 mtrs. from his business premises which he said that he has purchased from M/s. V.K. Jain & Sons; that in terms of the Notification No. 204-Cus., dated 20-7-84 issued under Section 123 of the Customs Act, 1962, as amended; in cases of fabrics made wholly or mainly of synthetic yarn, the burden of proving that the goods are not smuggled shall be on the person from whom the said goods were seized or who claims to be the owner of the same; that the appellant has failed to prove that the seized goods are not smuggled; that the EXIM Policy issued under Section 5 read with Section 3(3) and Section 4 of the Foreign Trade (Development and Regulation) Act, 1952 imposed prohibitions/restrictions on import of certain goods and any goods imported contrary to the restrictions/prohibitions are liable to confiscation under Section 111(d) of the Customs Act, 1962 and any person (as concerned)

acquiring/removing/ possessing, purchasing, etc., or in any other manner dealing with the goods which he knows or has reason to believe are liable to confiscation under Section 111(d) of the Customs Act, 1962 rendered himself or themselves liable to penal action under Sections 112(a) and (b) of the said Act; that in his statement dated 31-7-99, the appellant has not contested at the time of seizure; that the appellant cannot take refuge of the bill; that the appellant has failed to discharge the burden cast upon him; that the order passed by the lower authorities is fully justified and does not call for any interference.

4. After hearing the rival submissions, perusal of the case laws cited and perusal of the records, I find that the appellant has admitted recovery of the cloth in question from his business premises, a fact which has not been contested by him at any stage so far as recovery and seizure of the same is concerned. The burden of proving that the goods are not smuggled, lies on the person from whom the goods were recovered/seized or whosoever claims to be the owner of the same. The finding to this effect has been recorded by both the lower authorities.

I am, therefore, of the opinion that this is not a good case on merits warranting interference in the orders passed by the lower authorities.

The appeal is accordingly dismissed.

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