Raj Traders Vs. Commissioner of Customs,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-18-2002

Reported in : (2002)LC879Tri(Delhi)

Judge : S T G.R., P Bajaj

Appellant : Raj Traders

Respondent : Commissioner of Customs,

Judgement :

1. The appellants have filed these appeals assailing the order of the Commissioner (Appeals) confirming demand of Special Additional Duty of Customs amounting to Rs. 29,702/-and Rs. 38,499/-, directing payment of interest at a rate of 24% and imposing penalty of Rs. 28,702/- and Rs. 38,499/-.

2. The facts of the cases briefly are that the appellants imported 48.375 MTs Onion from Pakistan during Sept. and Oct. 1998, They filed Bills of Entry and claimed exemption from payment of Special Additional Duty of Customs in terms of Notification No. 34/98-Cus., dated 13-6-98 as amended by Notification No. 56/98-Cus., dated 1-8-98 by filing a declaration as provided in the notification. One of the conditions of the notification was that the goods shall be exempt from payment of Special Additional Duty of Customs only if the same were not sold from a place where no tax was chargeable on sale or purchase of goods.

Enquiries conducted revealed that Onion and Garlic are sales tax free under the Punjab General Sales Tax Act, 1948. Thus it was clear that the appellants were not required to pay any tax in respect of the Imported Agricultural Produce, therefore, the exemption from Special Additional Duty of Customs was wrongly availed by the appellant.

Therefore, the Id. Commissioner held as indicated above.

3. None appeared for the appellant. As the issue was covered by the decisions of this Tribunal, it was decided to proceed with the matter in spite of the fact that the request for adjournment was received from the appellant.

4. We have perused the impugned order. We note that Onions were imported from Pakistan. We further note that the appellants had claimed the benefit of concessional rate of duty in terms of Notification No.56/98-Cus., dated 1-8-98. This benefit was available only if the sale of imported onion was not to be made from a place located in an area where no tax was chargeable on sale or purchase of onion. In the instant case, we note that on enquiries revealed that no sales tax on onion were chargeable in Punjab. Thus in terms of the notification, the appellants were not entitled to claim the benefit. Since they claimed the benefit, therefore, the levy of duty charging of interest is sustainable in law and we hold accordingly. However, in so far as imposition of penalty is concerned, we note that there was no provision of imposition of penalty in the statute levying Special Additional Duty of Customs. Accordingly, imposition of penalty was not sustainable in law, therefore, the order imposing penalty is set aside. The appeals are disposed of in the above terms.