Sanjeev Kedia Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-22-2002

Reported in : (2002)(146)ELT197Tri(Mum.)bai

Judge : J Balasundaram, J T J.H.

Appellant : Sanjeev Kedia

Respondent : Commissioner of Customs

Judgement :

1. For reasons recorded below we waive pre-deposit of the penalty of Rs. 5 lakhs imposed upon the applicant who is the Director of M/s. Jai Bhagawati Impex Pvt. Ltd. and M/s. Wescon Exports Pvt. Ltd., and proceed to take up the appeal itself for hearing with the consent of both sides.

2. The case of the department is that M/s. Jai Bhagawati Impex Pvt.

Ltd., and M/s. Wescon Exports Pvt. Ltd., imported marble in blocks and slabs in huge quantities from Italy and deliberately did not clear the same for long period after their importation with the intention of cornering the goods through auction at a much reduced price of uncleared cargo. The Commissioner has absolutely confiscated the goods imported by these two companies and imposed a penalty upon the common Director of both companies.

3. The appellant does not challenge the confiscation but submits that in the absence of any notice to the importers, namely, the two companies of which he is

the Director, no penalty can be imposed upon him in his capacity only as Director.

4. The learned DR reiterates the findings of the Commissioner in the impugned order.

5. We have carefully considered the rival submissions. We see great force in the appellant's contention that in the absence of any action taken against the two companies, who have been found to be the importers of the goods ultimately confiscated, no penalty can be imposed upon him. We, therefore, set aside the penalty as unsustainable and allow the appeal in so far it relates to imposition of penalty upon the appellant.