Shafiqur Rehman Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-29-2002

Reported in : (2003)(87)ECC123

Judge : S Kang

Appellant : Shafiqur Rehman

Respondent : Cc

Judgement :

1. Appellant filed this appeal against the order-in-appeal passed by the Commissioner (Appeals).

2. Brief facts of the case are that officers of Customs Department seized the goods of foreign origin i.e. torches. The appellant, who is claimant of the goods, made a statement under Section 108 of the Customs Act that the consignment was sent to him for sale in the market on commission basis by one Shri Gopan Singh and has to receive rupee one per torch for selling these goods in Delhi. The goods, in question, are smuggled through Burma border. The adjudicating authority, after issuing the show cause notice to the appellant, confiscated the goods and allowed the same on payment of redemption fine of Rs. 15,000.00 and imposed a penalty of Rs. 10,000.00 on the appellant, 3. The contention of the appellant is that certain cigarettes were also taken into possession alongwith these torches and separate proceedings were initiated in respect of cigarettes, in question, and the Tribunal, vide Final Order No. VIII(H.Qrs.)10/A&R/47/93/16558 dated 7.7.99 set aside the

order of confiscation and imposed penalty on the ground that the marking on cigarettes does not, in any manner, indicate that cigarettes were of foreign origin.

4. The contention of the appellant is that in the present case also, there is no marking on torches to show the foreign origin. The contention of the appellant is that the goods are not notified goods.

Therefore, the onus is on Customs authorities to prove that the goods, in question, are smuggled one.

5. Ld. DR, appearing on behalf of the revenue, reiterates the findings of the lower authorities.

6. In this case, 2550 torches of Flying Eagle Brand carrying inscription in Chinese language 'WUCHOW KWANGSI', valued at Rs. 1,27,500 were recovered. The contention of the appellant is that alongwith these torches, some cigarettes were also taken into possession and the proceedings in respect of cigarettes were set aside by the Tribunal. In that case, there was no marking on cigarettes, which shows their foreign origin. Therefore, the Tribunal set aside the confiscation order. In the present case, there is a specific marking on the torches which shows that these are of Chinese origin. Appellant, in his statement, admitted that these torches were smuggled through Burma border by one Shri Gopan Singh and the appellant was to sell the torches in market on commission basis. This statement was recorded on 18.11.96. This statement was never retracted by the appellant. In reply to show cause notice, on 1.4.97, appellants, gave a new version that the goods were manufactured in India.

7. Appellant in his statement before the Customs officers specifically admitted that the goods are of smuggled nature and it was sent by one Shri Gopan Singh to him and in reply to show cause notice, he has taken contrary plea that the goods are not of foreign origin, but he has not produced any evidence to show that the goods were legally imported by him or manufactured in India. The statement made under Section 108 of the Act by the appellant before the Customs authorities never retracted by him. Therefore, in absence of any proof, in support of the claim that the goods were of Indian origin, as claimed by the appellant in reply to show

cause, I find no infirmity in the impugned order. The appeal is rejected.