Perfect Commodity Impex Vs. Commissioner of Customs

Perfect Commodity Impex Vs. Commissioner of Customs

SooperKanoon Citation : sooperkanoon.com/28941

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-19-2002

Reported in : (2003)(161)ELT316Tri(Mum.)bai

Judge : J Balasundaram, J T J.H.

Appellant : Perfect Commodity Impex

Respondent : Commissioner of Customs

Judgement :

1. This is an application for the stay of operation of the impugned order. The applicant imported heavy melting scrap and sold it on high seas sale basis to M/s. Joginder Casting Pvt. Ltd. M/s. Joginder Casting Pvt. Ltd. filed the bill of entry. On examination it was found that the cargo contained new crank shafts as also heavy re-rollable scrap. The Commissioner enhanced the valuation. He released the heavy melting scrap but confiscated the other goods, permitting redemption of fine. He also imposed penalty on importer M/s. Joginder Casting Pvt.

Ltd. The present appeal has been filed by Shri M.S. Nihalani, the Proprietor of the unit who had made the high seas sale. The present application is also made by them.

2. At the outset we asked Shri Anil Balani, Advocate to establish the locus of the appellants. He claimed that the appellant was the owner in terms of the definition under Section 2(26) of the Customs Act. We have seen the definition of 'importer'.

The definition reads as below:- "importer, in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer." It is an inclusive definition. The person in whose name the bill of entry is filed does not cease to be the importer. In other words, the person who has secured the release of the goods from the carrier, who has filed the bill of entry and who has undertaken the work of clearance, continues to be an importer. The definition, as reproduced above is designed to protect the interests of the owner or exporter where the goods have not been claimed or redeemed by the designated importer in India. The definition cannot be used to usurp the identity from the person who filed bill of entry.

3. In the present case, the claim that he is an unpaid seller does not confer upon him the privilege of an importer. M/s. Joginder Casting having been treated as an importer in the entire proceedings that title cannot be claimed by the present applicant.

4. We thus find that the appeal filed is not maintainable since the appellant does not have any locus standi. We dismiss the appeal. The application also, stands dismissed.