

R.M. Electronics Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-20-2003

Reported in : (2003)(160)ELT896TriDel

Judge : P Bajaj

Appellant : R.M. Electronics

Respondent : Commissioner of Customs

Judgement :

1. In this appeal the appellants have questioned the validity of the impugned order-in-original dated 10-9-2002 vide which the Commissioner of Customs has imposed a penalty of Rs. 4,21,065/- under Section 112(a) of the Customs Act.

2. The facts are not much in dispute. The appellants imported goods "integrated circuits" as parts of the radio cassette recorder. The goods were got cleared by them vide Bill of Entry dated 26-4-99 and in that Bill of Entry the goods declared by them were of Chinese origin.

They accordingly paid the customs duty before taking the delivery of the goods. But after 20 days of the clearance of the goods, they on 18-5-99, voluntarily submitted a letter to the Commissioner of Customs that the goods were of Japanese origin, but by oversight those were mentioned as Chinese origin by the supplier in the import documents.

They accordingly deposited the differential duty of Rs. 4,21,065/- vide TR-6 challan dated 22-5-99. Thereafter they were served with a show cause notice dated 5-2-2002 proposing imposition of penalty under Section 112(a) of the Customs Act for having misdeclared the goods.

After getting the reply wherein the appellants contested the imposition of penalty on the ground that they themselves voluntarily deposited the differential duty and there was no mala fide intention on their part to evade duty and that the show cause notice was issued after 3 years of clearance of the goods, the Commissioner of Customs through the impugned order had imposed penalty of the amount equal to the differential duty amount of Rs. 4,21,065/- deposited by the appellants.

3. I have heard both sides. The bare perusal of the show cause notice as well as the impugned order shows that differential duty was deposited by the appellants voluntarily within 20 days of the clearance of the goods from the ICD on the ground that they had learnt of the origin of the goods was in fact Japanese, but was by oversight mentioned in the import documents by the supplier as Chinese. They disclosed all the circumstances in the letter dated 18-5-99, while depositing the differential duty, under which the goods were declared of Chinese origin initially. The Customs authorities apparently came to know about all the true facts pertaining to the wrong declaration of the origin of the goods in the Bill of Entry, on 18-5-99, when the differential duty was deposited and letter of even date was submitted by the appellants. But the show cause notice was issued to the appellants only on 5-2-2002 after the expiry of the statutory period in terms of Section 27 of the Customs Act. Therefore, no penalty could be legally imposed on the appellants under Section 112(a).

4. Apart from this, even otherwise keeping in view the fact and circumstances detailed above, it is not a case where imposition of penalty under Section 112 of the Customs Act can be held to be justified. The appellants themselves within 20 days of the clearance of the goods approached the Customs authorities with true facts and deposited the differential duty. If their intention had been to evade payment of appropriate customs duty, they would not have voluntarily submitted

letter dated 18-5-99 and deposited differential duty.

Therefore, in the absence of any mens rea on the part of the appellants to evade payment of appropriate customs duty, they could not be burdened with the penalty under Section 112 of the Act. Moreover, before imposing penalty, the goods were required to be confiscated under Section 111(m) of the Act, even if the goods were not available for having been cleared to the appellants. But no such order had been passed. Therefore, the impugned order on that account also cannot be legally sustained.

5. In view of the discussion made above, the impugned order of the Commissioner is set aside. The appeal of the appellants is allowed with consequential relief if any, permissible under the law.

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