

Agro Impex Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-21-2003

Reported in : (2003)(158)ELT705Tri(Mum.)bai

Judge : J Balasundaram

Appellant : Agro Impex

Respondent : Commissioner of Customs

Judgement :

1. The above appeal arises out of the order of the Commissioner of Customs (Appeals) upholding the Deputy Collector's order of imposition of penalty of Rs. 6,35,000/- under Section 112(a) of the Customs Act, 1962 and upholding his finding that star aniseed imported by the appellants is liable for confiscation under Section 111(d) of the Act.

3. The goods in question have been held to be spices and are therefore consumer goods of agricultural origin requiring specific licence for their import which the appellant did not possess. The plea of the appellant that the goods are crude drugs finding specific mention against Serial No. 35 of the Appendix VI, List IV of 1990-93 policy has been rejected. Without going into the question as to whether the goods are consumer goods or other than the consumer goods, I find that it is possible to dispose of the appeal on the submission that penalty has been imposed in lieu of confiscation and hence not sustainable in the light of the Tribunal's decision in the case of Universal Steel Agencies v. C.C., Kandla - 2001

(138) E.L.T. 360. The Deputy Collector has held that: "As the goods have already been released provisionally and are not available for consideration, I impose a penalty of Rs. 6,35,000/- under Section 112(a) of the Customs Act, 1962." From the above it is clear that non-availability of the goods for confiscation has resulted in penal action against the importers. In the decision cited supra it has been held categorically that penal action cannot be taken in lieu of confiscation and that if the goods were not available for confiscation redemption fine could have been fixed but penalty cannot be imposed.

4. Applying the ratio of the above decision I hold that the penal action against the appellants is not justified, accordingly set aside the same and allow the appeal.

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