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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Calcutta

Decided On : Aug-22-2003

Reported in : (2003)(90)ECC530

Judge : A Wadhwa

Appellant : Zenith Credit Ltd.

Respondent : Commissioner of Customs

Judgement :

1. After hearing Shri K.P. Dey, ld. Adv. for the appellant and Shri J.R.Madhiam, ld. JDR for the Revenue I find that the dispute involved in the present appeal relates to the ownership of a truck which stands confiscated by the original adjudicating authority with option to the owner of the same on payment redemption fine of Rs. 25,000/-. The appellant is not challenging the confiscation of the truck but is aggrieved with the fact that the option has been given to the one Mr.

Khusnoor Alam who had purchased the truck from the appellant on hire purchase basis. Shri Dey submits that as per the hire purchase agreement, the appellant remains the legal owner of the truck till all the instalments are paid by the hirer. As such he submits that the option to redeem the truck should be extended to him. He also submits that they have filed a Civil Suit in the City Civil Court, Calcutta and vide its Order No. 2, dt. 10-4-2002 the ld. Judge has appointed a receiver for the appellant for taking the release of the truck in question. He submits that when the above facts were brought to the notice of the Revenue authorities they did not release the truck, but passed the orders against the appellant saying that the truck cannot be released to him.

2. I have also heard Shri J.R. Madhiam, ld. JDR for the Revenue who supports the impugned order passed by the Commissioner of Customs (Appeals), who has relied upon the Supreme Court's decision in the case of Ganga Hire Purchaser Pvt. Ltd, v. State of Punjab - 2000 (121) E.L.T. 9 (S.C.) as also on the Tribunal's decision in the case of J&K State Financial Corpn. v. CC, Lucknow - 2001 (132) E.L.T. 228 (Tribunal-Delhi).

3. I find that the above decisions are not applicable to the facts of the instant case. In fact in the case of Ganga Hire Purchase Pvt. Ltd, Hon'ble Supreme Court observed that - "there is also no dispute that under the Hire Purchase Agreement the title of the vehicle is retained with the appellant until and unless the entire hire purchase money is paid back". However, the Hon'ble Supreme Court interpreted that the expression 'owner' must be held to be regd. owner of the vehicle for the purposes of confiscation of the vehicle. It is seen that in the said case the appellant was challenging the very confiscation of the vehicle on the ground that since they remain legal owner of the vehicle and they were not in any way connected for transportation of the narcotics in the vehicle, the same be released unconditionally to them.

It was in this context that the Hon'ble Supreme Court observed that for the purposes of confiscation the owner has to be taken as a regd. owner of the vehicle and not otherwise.

In the present case the appellant is not challenging the confiscation of the vehicle. He is only asking for release of the vehicle in his favour on payment of redemption fine so determined by the original adjudicating authority.

4. In the other case of J&K State Financial Corpn., the claim of the financial corpn. was not accepted on the ground that no suit was filed by the corporation against the hirer and the deemed ownership was not a valid plea against confiscation under the Customs Act inasmuch as Section 115(2) of the Act refers to the regd. owner. The Tribunal also observed that the appellant has failed to prove that they

were the legal owner of the vehicle. In the instant case however I find that the appellant has filed a Civil Suit in the City Civil Court, Calcutta and there is an order of the Court appointing a receiver for getting release of the vehicle in question. In these circumstances the ratio of the Tribunal's decision in J&K State Financial Corpn. does not apply.

5. With the above observation I set aside the impugned order and remand the matter to the Commissioner (Appeals) with directions to look into the relevant hire purchase agreement and the other documents produced by the appellant in support of their claim that all the instalments of the truck in question were not paid by the hirer and that they continued to remain the owner of the truck in question. While deciding the issue in de novo proceedings the Commissioner would also take note of the order dt. 10-4-2002 passed by the Civil Judge while entertaining the appellants' claim for release of the truck in question. Appeal is thus allowed by way of remand.