

Cc Vs. Sahil Trends and ors.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-07-2003

Reported in : (2004)(112)LC727Tri(Delhi)

Judge : K Usha, M T K.D.

Appellant : Cc

Respondent : Sahil Trends and ors.

Judgement :

1. The Commissioner (Customs), Kandla is an appellant in all these appeals. The instant appeals have been filed on the basis of CBEC's Review Order under Section 129(D)(1) of the Customs Act, 1962. In the appeals, it has been pleaded that, though in the impugned order, the imported goods were held liable for confiscation under Section 111(o) of the Customs Act, 1962, for not observing the conditions of the exemption notification availed, no redemption fine was imposed on the goods which were held liable to confiscation. On placing reliance on the apex Court's judgment in the case reported as 1984 (ECR) 138 (SC) and also in the case of Western Components Ltd. v. CCE, Delhi reported as , it is stated that, fine in lieu of confiscation can be imposed, even in case, where goods are physically not available for confiscation. The appeal further contends that, the Commissioner has not imposed any penalty under Section 112, even though, these were proposed in the show-cause notices.

3. We note that the occasion for imposition of redemption fine can arise only if the goods are seized under Section 110. In the impugned order, though the goods have been held to be liable for confiscation there was no seizure of the goods. Consequently there was no order to confiscate the goods. Unless the goods are seized there can not be any confiscation thereof. In this connection, reference is invited to Section 126 of the Customs Act, which provides that, upon confiscation of the goods, the property shall thereupon vest in the Central Government. Section 126(2) provides that the officer adjudicating confiscation, shall take and hold possession of the confiscated goods.

The effect of all these provisions clearly indicate that, unless the goods are seized there cannot be any confiscation thereof. Whereas for the purpose of imposition of penalty it only needs to be demonstrated that the goods are liable for confiscation and need not be actually confiscated. Therefore, we hold that the adjudicating authority was right in imposing only the penalty and not imposing redemption fine.

4. In the judgment of the Apex Court cited in support of the appeals the facts are somewhat different, inasmuch as there was initial seizure and the goods were allowed to be released provisionally in terms of a bond. In the instant case, the goods have not been seized at all as these were unavailable ab initio. Therefore, the appeals of the Revenue on this point are without any merits and deserves to be rejected.

5. So far as the other ground viz. non-imposition of penalty under Section 112, is concerned, we note that, the penalty imposed under Section 114A of the Act is adequate and, therefore, there appears to be no case for imposition of a separate penalty under Section 112.