Parag Sheth Vs. Commissioner of Customs

Parag Sheth Vs. Commissioner of Customs

SooperKanoon Citation : sooperkanoon.com/32885

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-31-2003

Judge : J Balasundaram, A M Moheb

Appellant : Parag Sheth

Respondent : Commissioner of Customs

Judgement :

1. The application for waiver of pre-deposit of duty and penalty and stay, stay recovery thereof and restrain the Department from enchasing the balance amount of Rs. 1 lakh executed at the time of release of goods provisionally arose out of the order of the Commissioner of Customs, Ahmedabad dated 18.07.2002.

2. Briefly the facts are that the applicant imported a consignment of I.C.s, and Transistors and sought clearance under Bill of Entry No.6838/98 dated 29.10.98. The subject goods were detained on the allegation that they were grossly under valued. They were later on released provisionally on payment of differential duty of Rs. 8 lakhs and on execution of Bank Guarantee for an amount of Rs. 1 lakh and on execution of a Bond for Rs. 24,60,956/-. Further enquires conducted by the Department revealed that the applicant imported several consignments of electronic components from various ports on different dates grossly undervaluing them. On the basis of these enquires a show cause notice was issued asking the applicant to explain why the declared values for the electronic goods imported from time to time should not be rejected and goods totally valued at Rs. 1,35,83,355/- (several imports by the applicant were taken into consideration)

should not be confiscated under 111(d) and (m) and why penalties should not be imposed on various persons.

3. The Commissioner in the impugned order demanded a differential duty of Rs. 59,52,387/- and ordered adjustment of Rs. 8 lakhs paid at the time of provisional release, confiscated the goods imported under various Bills of Entries valued at Rs. 1,35,83,355/-, imposed penalty of Rs. 59,52,387/- on the applicant ordered encashment of Bank Guarantee of Rs. 1 lakh and imposed penalties on others with whom we are not presently concerned as they are not the applicants.

4. The ld. Advocate on behalf of the applicant argued that the Commissioner relied upon evidence in the form of letters from M/s Fumiyama Corporation Pvt. Ltd., Singapore and M/s Electronic Devices (Bombay) Ltd. through these firms denied having written the said letters in question, that the Commissioner relied on a letter from Superintendent AIU dated 29.5.2002 which is received by him after the hearing in the case before him was over; he did not give any ruling on the applicants' request for cross examination of representatives of M/s Philips India Ltd. whose version on the value of the imported goods was relied upon and that the Commissioner in the impugned order rejected the transaction value of these goods without proper reason. The ld.Advocate contended that out of the total duty demanded a sum of Rs. 8 lakhs was already paid by the importer and that they were prepared to keep the Bank Guarantee of Rs. 1 lakh alive till the appeal are decided.

6. We observe that the impugned order of the Commissioner is in relation to a consignment which was provisionally released and several other consignments which were earlier imported and cleared. The reasons for rejecting the transaction value in all these consignments have to be gone into. The Commissioner also did not give any finding on the request for cross examination of representatives of M/s Philips India Pvt. Ltd. whose version he relied upon. The applicants made out a strong prima facie case in their favour. We observe that the applicant paid Rs. 8 lakhs and executed a Bank Guarantee for Rs. 1 lakh and executed a bond. We find that the applicant is prepared to keep the Bank Guarantee alive till the appeal is decided. Having regard to these facts we waive pre-deposit of the balance duty

and penalty and stay recovery them till the appeal is decided. The applicant shall keep the Bank Guarantee for Rs. 1 lakh alive till these proceedings are concluded.