

Nipa Traders Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-07-2003

Reported in : (2004)(91)ECC102

Judge : S T Gowri

Appellant : Nipa Traders

Respondent : Commissioner of Customs

Judgement :

1. The officers of the department found in the factory of the appellant chemicals of foreign origin. The appellant could not explain satisfactorily from where he had purchased the goods, saying that they were purchased from a broker against cash payment for which it has received no bill. The officers therefore seized the chemicals on the view that they were smuggled. Notice issued to it proposing recovery of duty under Section 28 of the Act, confiscation of the goods under Clause (d) of Section 111 and penalty on the appellant. The Joint Commissioner, whose order has been confirmed on appeal by the Commissioner (Appeals), demanded duty, ordered confiscation of the goods under Clause (d) of Section 111 with an option to redeem them on payment of fine and imposed a penalty on the appellant. Hence this appeal.

2. The counsel for the appellant contends as follows. The provision of Section 28 of the Act cannot be invoked against a purchased of the goods subsequent to clearance from the Customs. Confiscation of the goods under Clause (d) of

Section 111 is not sustainable. Import of the goods at the relevant time was not prohibited. He cites provisions of import policy in this regard. Therefore, penalty was not imposable.

3. The departmental representative emphasises that suspicious circumstances in which the goods were in the appellant's possession and his inability to explain the purchase. Otherwise supports the order of the Commissioner (Appeals).

4. The chemicals in question consisted of H acid and glycerine which at the relevant time was freely importable. The goods were seized from the appellant in November 1999 when they were not notified under Section 123 of the Act. In the light of the provisions of the policy permitting free import of the goods, burden of proving that they were smuggled was upon the department which has not been discharged. The confiscation of the goods is therefore not sustainable.

5. Section 28 is concerned with recovery of duty after issue of notice from the person chargeable to such duty. Such a person is the importer or the person not being the import who clears them out of Customs charge- such as the persons who buys from where the goods which has been warehoused under Section 60 of the act and seeks to clear them for home consumption. It may also possibly to cover other clauses of persons. However, it is not possible to say how it applies to a person who has no connection with clearance of the customs as established. It is not the department's case that the appellant imported these goods or cleared from the Customs. The provisions of the Act would not apply.

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