Ally Enterprises Vs. Commissioner of Customs

Ally Enterprises Vs. Commissioner of Customs

SooperKanoon Citation : sooperkanoon.com/32981

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-10-2003

Reported in : (2004)(165)ELT340Tri(Mum.)bai

Judge : S T Gowri, K Kumar

Appellant : Ally Enterprises

Respondent : Commissioner of Customs

Judgement :

1. The appellant imported a consignment of toys and florescent tube.

After their examination the goods were subjected to adjudication on the ground that they were consumer goods import of which required a licence which has not been produced. After hearing the importer, who waived the issue of written notice, the Additional Commissioner passed orders ordering confiscation of the goods under Clause (d) of Section 111 of the Act permitting them to be redeemed on payment of fine of Rs. 1.50 lakhs and imposed penalty of Rs. 35,000 under Section 112.

2. Subsequent to the passing of the order before the clearance of the goods the officers of the Directorate of Revenue intelligence acting on information once again examined the consignment this time finding in it 100 cartons containing 50 dozens of nail cutters each. Notice was issued to the importer proposing confiscation of these goods under Clauses (d) and (m) of the nail cutters and confiscation of the

remaining goods under 119 of the Act having been used to conceal the nail cutters and penalty. This resulted in the order of the Commissioner ordering confiscation of the goods with an option to redeem them on payment of fine of Rs. 65,000/- for redemption of the nail cutters and Rs. 50,000 for redemption of the other goods and imposed penalty of Rs. 50,000 on the importer. The appeal is against the second order of redemption.

3. The Counsel for the appellant does not seek to challenge the liability to confiscation once again of any of the goods. The sole contention is that the importer has already been affected to penalty and paid fine on the goods, the redemption fine and penalty now under consideration are excessive and harsh. It precisely to avoid occurrence on this there are instruction to Custom officer which are subjected to adjudication for any purpose whatever. We are unable to understand how the presence of substantial quantity of nail cutters in 100 cartons escaped the attention of the assessing officer. It is equally surprising that the importer chose not to notice of the officer the presence of nail cutters. The continued silence of the importer throughout the proceedings prior to detection of the nail cutter tells against him. In the fact of this case, we do not find any ground for extending leniency.