Commissioner of Customs Vs. Vardhaman Special Steels

Commissioner of Customs Vs. Vardhaman Special Steels

SooperKanoon Citation : sooperkanoon.com/33112

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-18-2003

Reported in : (2004)(166)ELT416Tri(Mum.)bai

Judge : S T Gowri, K Kumar

Appellant : Commissioner of Customs

Respondent : Vardhaman Special Steels

Judgement :

1. Vardhaman Special Steel, the respondent to this appeal imported in April 1994 a consignment of heavy melting scrap which, on examination, was found to contain cartridge scrap, damaged guns and smoke shells, totally Rs. 85,425/-. It is not disputed that import of these goods were prohibited. The respondent waived the issue of written notice of hearing. The Additional Commissioner ordering confiscation of these goods permitting the cartridge scrap and smoke shells to be released on payment of fine. In appeal that the importer filed to the Commissioner (Appeals), it contended that it had relinquished the title to the goods and accordingly advised the department by its letter of 11.8.95 and therefore duty was not payable on the goods and neither fine nor penalty was payable. The Commissioner (Appeals) accepted this contention and allowed the appeal. Hence this appeal by the Commissioner.

2. The ground in the appeal is that order of clearance made under Section 47 was prior to letter dated 11.8.95 for relinquishing title.

Its attempt to relinquish is not permissible in terms of provision of Section 23(2) of the Act which only permits relinquishing of title before the order is made under Section 47 for home consumption or for depositing the goods in a warehouse under Section 60. The departmental representative emphasised this contention.

3. Counsel for the respondent attempts to contend that relinquish of title was made prior to any order passed under Section 47. He says that the order of the adjudicating authority was passed on 22.11.95 after the importer had indicated its intention to relinquish the title. The goods were imported in April 1994. The department's contention is that the order of the Asst. Commissioner was passed not on 22.11.95 as is shown in it, it was passed much earlier on file and communicated to the importer by a brief mention on the bill of entry. This could not be questioned by the counsel for the respondent. No doubt a formal order was passed in September 1996. However, it is normal practice in the custom house, in order to ensure speedy clearance of the goods to pass orders on file and to communicate these orders by means of endorsement put on the bill of entry which indicates whether the goods have been confiscated and the fine if any of the redemption. Counsel for the respondent is not able to dispute after verification of the bill of entry, that the order of confiscation of the goods was communicated to it through the bill of entry, or that the fine and penalty were paid by it subsequent to such communication. Where in a situation, fine and penalty are paid after adjudication of the confiscation of goods, it is clear that the importer, who paid the fine and penalty, considered himself to be the owner of the goods. If he did not, he would not seek to redeem them after their confiscation by paying the fine and the penalty. We therefore do not find it possible to uphold the order of the Commissioner (Appeals). Of course, if the importer despite paying fine has not cleared the goods he is not liable to pay the duty on it.

The penalty imposed on it would continue to remain valid.

4. Accordingly the order of the Commissioner (Appeals) is set aside and the order of the Additional Commissioner restored.