Vrindavan Carpets Vs. Commissioner of Customs (Prev.)

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-13-2004

Reported in : (2004)(167)ELT112Tri(Mum.)bai

Judge : J Balasundaram, A M Moheb

Appellant : Vrindavan Carpets

Respondent : Commissioner of Customs (Prev.)

Judgement :

1. The appellants herein exported a consignment declared as floor covering - 100% cotton handloom rugs(durries) claiming draw back under S.S No. 5702 which was found to be inadmissible as the goods on examination were found to be 100% bath rugs covered under the drawback schedule under S.S.No. 6306. The goods were held liable to confiscation under Section 113(iii), however, since they had been permitted to be exported on provisional basis and were therefore not available for confiscation, redemption fine of Rs. 2 lakhs was levied and a personal penalty of Rs. 20,000/- imposed in terms of Section 114(iii) of the Customs Act, 1962, by the Commissioner of Customs, Mumbai against whose order the present appeal has been preferred.

2. We have heard both sides. Chapter 57 of the Duty Drawback Rates Schedule covers Carpets and other Textile Floor Coverings and SS No.5702 covers cotton durries/cotton rugs/cotton chenille rag, rug, durries etc. attracting 6% of FOB value as draw back, whereas, Chapter 63 deals with other made ups textile articles and

SS No. 6306 specifically includes bath mats and bath rugs attracting 7% of FOB value as draw back. The purchase order against which the exporters supplied the goods clearly shows that they described the goods as 100% cotton bath rugs. Therefore, the Commissioner has rightly held that the consignment presented for export valued at Rs. 24,83,341 under drawback claim for Rs. 1,49,000 has been deliberately presented by mis-declaration of the goods with intention to avail inadmissible benefit of duty drawback. The exporters relied upon a subsequent clarification dated 21.11.1997 of the Handloom Export Promotion Council wherein it has been clarified that Chenille rugs, bath mats, bath rugs etc. were varieties of hand woven floor coverings and therefore classified as floor coverings; however, this clarification, in addition to not being available for consideration by the Adjudicating Authority, does not aid the appellants, as it clearly shows that 100% cotton handloom chenille bag rugs fall under harmonized heading 5703.10 and not under 6306 under which they claimed draw back. We, therefore, uphold the impugned order of confiscation, but in the facts and circumstances of the case and having regard to the amount of drawback, reduce the Fine to Rs. 1,00,000/-(Rupees One lakh) and penalty to Rs. 10,000/-(Rupees Ten thousand).