

**Friends Cutter Vs. Cce**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Mar-05-2004

**Reported in :** (2004)(95)ECC674

**Judge :** P Bajaj

**Appellant :** Friends Cutter

**Respondent :** Cce

**Judgement :**

1. This appeal has been directed by the appellants against the impugned Order-in-Appeal vide which the Commissioner (Appeals) has confirmed by confiscation of the seized goods and duty payable thereon. The learned Counsel has contended that the goods could not be confiscated and duty also could not be confirmed against the appellants, who are not the manufacturers of the goods and that no notice for confiscation of the goods was also served on them. Therefore, the impugned order deserves to be set aside. On the other hand, the learned JDR has reiterated the correctness of the impugned order.

2. I have heard both sides and gone through the record. From the perusal of the record, it is evident that on 19.1.2001, the search of the premises of the appellant was carried out and the goods in question i.e. SS flats weighing 54.50 MTs lying therein were recovered. No documents regarding the acquisition of the goods in any form were produced by the appellants and as such the goods were seized.

Thereafter, show cause notice was issued wherein the duty demand was raised from the manufacturer (whosoever) as the name of the manufacturer could not be ascertained by the Department and the goods were also proposed to be confiscated under Rule 173Q. Penalty was also proposed on the appellants under Rule 209A. Shri Gobind Gupta appeared before the adjudicating authority in response to the show cause notice and expressed his willingness to pay the excise duty. He submitted the challan dated 9.1.2001 and further stated that he was ready to take the entire responsibility of the goods in case Chanchal Trading Co. did not come forward to claim the goods. None appeared from the above trading company to claim the goods.

3. The adjudicating authority ordered confiscation of the goods, but gave option to get the same redeemed on payment of redemption fine.

That authority also confirmed duty demand of Rs. 44,097 against the party (without naming anybody) and imposed penalty of Rs. 2,75,605 on the appellants under Rule 173Q. However, that penalty has been set aside against the appellants by the Commissioner (Appeals) by holding them to be not the manufacturers.

4. The contention of the Counsel that no confiscation of the goods could be done under Rule 173Q as the appellants are not the manufacturers of the goods and no notice had also been served on them before ordering the confiscation, cannot be accepted. In the show cause notice copy of which was served on the appellants, confiscation of the goods was proposed. The goods had been recovered from the premises of the appellants and are excisable goods. The appellants did not claim the ownership of the goods, on one hand, but on the other hand, their representative voluntarily offered to pay the entire, duty payable on those goods. He even took all the responsibilities in respect of those goods if the same were not claimed by Chanchal Trading Co. But the above-said company had not laid its claim to the goods. Therefore, the appellants are bound by the statement made by Gobind Gupta, their representative. For having failed to explain the mode and the manner in which the excisable goods were acquired by the appellants, the same had been rightly, in my view confiscated under Rule 173Q. The fact that the appellants had voluntarily paid the duty without raising any objection, goes a long

way to belie their version that no duty could be confirmed against them. The argument of the Counsel that without serving show cause notice, no confiscation of the goods could be done also cannot be accepted as in the show cause notice copy of which was sent to them, confiscation of the goods was proposed.

5. In view of the discussion made above, I do not find any illegality in the impugned order and the same is upheld. The appeal of the appellants is dismissed.

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