Kalpesh JaIn Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-22-2004

Judge : S T S.S.

Appellant : Kalpesh Jain

Respondent : Commissioner of Customs

Judgement :

1. The present appeal arises out of Order dated 29-1-2003 of the Commissioner of Customs (Appeals) rejecting the Appellant's appeal against Order dated 16-10-2001 of the Joint Commissioner of Customs, Preventive by which the Joint Commissioner had absolutely confiscated 1080 Pieces of "Phillips Semi-Conductors (Integrated Circuits)" under Section 111(d) of the Customs Act 1962 and imposed a penalty of Rs. 6000/- on the Appellant: under Section 112 of the said Act.

2. The goods in question were dispatched to the Appellant by rail from Chennai by Eletronika Sales Corporation and the same were seized on their arrival at CST Railway Station, Mumbai. In his statement dated 1-3-2001 recorded under Section 108 of the Customs Act 1962, the Appellant stated that the said goods had been purchased by the Appellant from Electronika Sales Corporation, Chennai and produced Invoice No. 053582 dated 21-12-2000 of the said supplier. A copy of Bill of Entry under which the said Electronika are said to have imported the said goods was also submitted.

3. It was submitted that no enquiries with the said supplier was done and no statement was recorded of the supplier and Show Cause Notice was issued. The order of confiscation and penalty was passed on the ground that the Bill of Entry produced could not be correlated with the goods seized.

4. The goods in question are neither notified under Chapter IVA of the Customs Act 1962 nor specified under Section 123 of the said Act and therefore the burden was not on the Appellant to prove their licit import. The burden to prove that the goods were smuggled was on the department and this burden cannot be said to have been discharged by the department when no inquiries whatsoever were conducted with the supplier of the goods and when no statement of the supplier was recorded by the department. Further the goods in question were freely importable and were not restricted for import and consequently as laid down in the following judgments their confiscation under Section 111(d) and imposition of penalty under Section 112 cannot be sustained :Harbanslal Dawar and Anr. v. CC-Order No. CII/2053-54/02- WZB Dated 5. Accordingly confiscation and penalty are set aside and the Appeal is allowed with consequential relief.