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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-20-2004

Judge : A M Moheb

Appellant : Shree Deepak Export

Respondent : Commissioner of Customs (Export)

Judgement :

1. This appeal is filed against the order of the Commissioner of Customs (Export), Mumbai, who is the impugned order held that the exporter contravened the provisions of 50(2) of the Customs Act and thereby rendered the goods liable to confiscation under Rule 113(ii) of the Customs Act, 1962 and have rendered himself liable to penalty under Section 114(iii) of the same Act. He confiscated the goods valued at Rs. 52,25,595/- and allowed him to redeem the goods on payment of a fine Rs. 75,000/-. He also imposed a penalty of Rs. 1,50,000/- on the exporting company, M/s Shree Deepak Export. Hence this appeal.

3. In brief, the acts are that the appellant filed a Drawback Shipping Bill seeking to export assorted cotton woven readymade garments and declared a total FOB value of Rs. 52,25,595/-. The consignment was examined. On such examination, it was found that it consisted of old and used garments and the majority of the items were found to be ladies shirts/blouses etc as against the declared gents' shirts in the drawback-shipping bill. It was found that the goods were not worth exporting. Thereupon the goods were seized and impugned order was passed.

4. The main contention of the appellant is that in the godown where the goods were stored and packed, there were other consignments of used garments etc and it was by mistake the goods which were not meant for export were tendered for export. Thus, the appellant had no intention either to mis-declare the goods or had any intention to inflate the value of the said goods. This is hardly a defence. The department comes to know of the mis-declaration after the examination of the goods. The examination reveals that the consignment tendered for export had used clothes and ladies blouses etc as against gents' shirts mentioned in the shipping bill. This is a clear case of mis-declaration. The Commissioner confiscated the goods under Section 113(ii), which says any goods entered for exportation under scheme of drawback, which do not correspond in any material particular with any information furnished by the exporter, are liable to confiscation. The Commissioner has rightly invoked the said provision. The Commissioner has also imposed a penalty under Section 114(iii), which provides for penalty on person who omits to do which render the goods for confiscation is liable to penalty. I have also examined the contention of the learned advocate that the Commissioner should not have confiscated the goods, which were already disposed of by the custodian. I do not find any merit in the contention.