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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-07-2004

Reported in : (2005)(179)ELT353TriDel

Judge : S Kang, Vice-, A T V.K.

Appellant : Vinod Arora

Respondent : Commissioner of Customs

Judgement :

1. The issue involved in this appeal, filed Sh. Vinod Arora, is whether the goods seized from his business premises are liable to confiscation under the Customs Act.
2. We heard Sh. M. Venkatraman, learned Advocate for the appellants, and Sh. S.M. Tata, learned S.D.R. for the Revenue.
3. In this appeal, the officers of Customs Department searched the business premises of M/s. Gourmet Electronics and seized DVDs, LDs, Perfumes and miscellaneous goods of foreign origin valued at Rs. 4,58,800/-. Shri Rakesh Kumar, who was present in the premises, could not produce any evidence, documentary or otherwise, to prove the legal import/possession/storage of the said goods. The appellant proprietor, in his statement dated 18-10-2000, has deposed that LDs. belonged to his brother Sh. Rajan Arora, who was running business earlier and, therefore, he was unaware of the procurement of the said LDs. About

DVDs, he produced some baggage receipts. Regarding items under seizure, the appellant stated that the said goods were given to him by his friend, Mr. Kumar based in USA and are kept in his depot as samples for display for the purpose of obtaining the bulk orders. Finally, he mentioned that the perfumes, seized from its premises, were purchased by him from the person whose name was not known to him. The Commissioner (Appeals), under the impugned order, has confirmed the confiscation of these goods by the Additional Commissioner holding that as the goods of foreign origin were seized from his premises, the explanation about their acquisition and possession has to come from the appellant. The Commissioner (Appeals) has drawn an inference from the fact that the appellant did not respond to the various summons that the goods were of smuggled nature; that the appellant was dealing with the contraband goods. The learned Advocate has contended that all the goods, in question, are neither notified under Section 123 of the Customs Act nor under Chapter IVA of the Customs Act and as such the burden of proof that the goods, in question, are smuggled, is on the Department. He also contended that the Baggage (Conditions of Exemption) Rules, 1975, which restricted the sale or display of the baggage items in a shop until the market price of such goods has depreciated to less than 50% of their market price, had been rescinded by Notification No. 2/93-Cus. (N.T.), dated 15-1-1993.

4. We find substance in the submissions made by the learned Advocate for the appellant. It is cardinal principle of law that the onus to prove the charge of smuggling is on the prosecution as the goods in question have not been notified under Section 123 of the Customs Act, which is an exception to the General Rule, the burden is cast upon the Department to prove that the impugned goods were smuggled into the country; that the Department has not discharged this burden at all.

Further, the impugned goods have also not been notified under Chapter IVA of the Customs Act and as such there is no requirement under the Customs Act for maintaining any records, etc. about the possession or the storage/sale of these goods. In view of this, we set aside the impugned order and allow the appeal.