

D.P. Exports Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-23-2004

Reported in : (2005)(99)ECC711

Judge : M T K.C.

Appellant : D.P. Exports

Respondent : Cce

Judgement :

1. These three appeals are filed, by M/s. D.P. Exports on the ground that the Commissioner (Appeals) has dismissed their appeals by following the decision of High Court of Rajasthan in the case of Shree Pipes Ltd. v. Union of India, 1994 (46) ECC 304 (Raj) : 1995 (79) ELT 405 where High Court has observed that in relation to customs supervision/cost recovery charges an order of the Assistant Collector dealing with a claim of the refund of recovery charges is an order which has been issued in his executive powers and is not appealable under Section 128 of the Customs Act. Shri Rajesh Chhibar, learned Advocate, pleaded that they are not questioning the recovery of supervision charges for which they have taken up the matter with the concerned Commissioner of Customs. They are only contesting the imposition of penalty under Section 117 of the Customs Act. Since the recovery of the supervision charges is a function of financial administration of the Government and the Rajasthan High Court has also held that it is not an appealable order under Section 128 of the Customs Act, therefore, the imposition of penalty by the original authority on the appellants under Section 117 of the

Customs Act was not justified. Therefore, they are challenging the order of the Commissioner (Appeals) to the extent of not setting aside the penalty imposed.

2. Shri V. Valte, learned SDR, appearing for the Revenue has agreed that the recovery of supervision charges is function of the administration and it is not an appealable order. Therefore, it was proper for the Commissioner (Appeals) to hold that the appeal is not maintainable instead of dismissing the appeal. Since he has dismissed the appeal, it means that he has admitted that appeal under the provisions of the Customs Act. However, he agreed that the penalty is not imposable under Section 117 of the Customs Act.

3. I have considered the submissions made by both the sides. I find that the Rajasthan High Court in *Shree Pipes Ltd. v. Union of India* (supra) has clearly held that only such order which may be passed under the Customs Act, is appealable under Section 128 of the Customs Act. In the present case, the issue relates to the recovery of establishment/supervision charges which were recovered in terms of the condition of the bond. Therefore, such order cannot be appealable before the Commissioner (Appeals) or the Tribunal. In these circumstances, the imposition of penalty under Section 117 of the Customs Act is not justifiable as for administrative act the penalty cannot be imposed under Section 117 of the Customs Act. Therefore, the order of the Commissioner (Appeals) is modified to the extent that the appeal is not maintainable as far as the recovery of supervision charges is concerned but imposition of penalty by the original authority under Section 117 of the Customs Act, is set aside.

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