Cc Vs. Tararam Prajapati

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-30-2004

Judge : A Wadhwa

Appellant : Cc

Respondent : Tararam Prajapati

Judgement :
1. Revenue is in appeal against order passed by commissioner of Central Excise vide which he has set aside the order of confiscation of non-notified goods on the ground that onus to prove that smuggled nature of the non-notified goods lies upon the revenue and as the revenue has not been able to produce any evidence to that effect, confiscation was not justified. While allowing the appeal he has observed as under: "I have carefully gone through the facts of the case as well as submissions made by the counsel of the appellant. In the instant case, it is a fact which is not in dispute that all the goods seized and confiscated by the deptt. are non-notified goods under section 123 of the Customs Act, nor under Chapter IVA of the Customs Act, therefore appellant is not require to discharge the burden of its non-smuggled nature and burden in such cases is entirely on the department. From the order-in-original, I find that the goods were seized and confiscated only on the ground that these goods were found to be of foreign origin and appellant agreed that those goods are of foreign origin. In addition to this, department has not even tried to investigate the issue further or placed any evidence on record to show that these goods were smuggled into India without payment of duty or in

violation of Customs Act or any other law for the time being in force. Merely because the goods are of foreign origin does not mean that these goods are smuggled goods, particularly when such goods are freely importable and tradable after importation. The burden in such cases is entirely on the department to produce evidence that such goods are not only of foreign origin but also smuggled into India without payment of duty or in violation of Customs Act or any other law in force. Since the department miserably failed to discharge the burden placed on them, so confiscation order cannot be legally up held. Govt. of India issued Notification 4/93-Cus/NT dated 15.01.1993 vide which several sensitive goods were taken out of the purview of Section 123 of Customs Act thereafter it was made clear by the Board in the instructions saying that the effect of this would be the person found in possession of these goods i.e. denotified goods, will no longer have to prove customs their licit import and it will be on the Customs to prove the smuggled nature of such items, and these items had ceased to be sensitive to smuggling and normal provisions of law will take case of such goods. The normal provisions of law is that burden of illicit import or the nature of the goods is on the deptt. The instruction issued by the Board is binding on the department, therefore, I fail to understand why the instructions which were issued some where in 1993, still department is feeling hesitant to follow those instructions and even non-notified goods are being seized and confiscated merely on the ground that such goods are of foreign origin and the appellant failed to produce the duty paid documents." 2. Though the matter is fixed today only for stay, I find that the law on the disputed issue is well settled and there is no justification for keeping the appeal pending. Accordingly, I proceed to decide the appeal itself. In the memo of appeal also, revenue has not produced any evidence, positive and tangible to show that the goods in question were smuggled. As such no infirmity is found in the order of the commissioner appeal. The revenue's appeal is accordingly rejected.