Jaswinder Singh Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-26-2005

Reported in : (2005)(190)ELT375TriDel

Judge : P Bajaj

Appellant : Jaswinder Singh

Respondent : Commissioner of Customs

Judgement :

1. In this appeal, the appellant has contested the correctness of the impugned order regarding confiscation of his tanker under Section 115(2) of the Customs Act and imposition of penalty of rupees 40,000/- under Section 112(b) of the Customs Act.

3. The perusal of the record shows that the tanker in question, belonging to the appellants, had been confiscated as the same was involved in the transportation of cardamom of foreign origin at the time of seizure by the Central Excise officers on the night of 26-5-2003. The driver of the truck slipped away under the cover of darkness from the spot and the appellants, who employed him, could not disclose his correct address. The goods i.e. 4 packets, each containing 5 Kgs, of small cardamom in plastic bags were also seized from the truck.

4. The vehicle, in question, could be legally confiscated only if it was involved in the transportation of smuggled goods of foreign origin, but there is no tangible

evidence, whatsoever, to substantiate this fact. No sample of the cardamom from each packet was drawn for test or for the market opinion. The officers who seized the packets of cardamom, by their own experience, opined that these were of the foreign origin. But how and in what manner, they had experience by which on visual examination they could be given definite opinion that the seized cardamom were of foreign origin. They did not get any opinion from those who were engaged in the sale and purchase of these small cardamom. The plastic bags in which the cardamom were packed also did not carry any foreign marking. Therefore, it is difficult to accept the view taken by the authorities below that the tanker in question was involved in transportation of the smuggled goods of foreign origin. The small cardamoms are freely available in India in the market also.

Therefore, confiscation of the tanker under Section 115(2) of the Customs Act could not be legally done. Similarly, no penalty under Section 112 of the Customs Act could be imposed on the appellants. The impugned order, consequently, against the appellants, is set aside. The appeal of the appellant is allowed with consequential relief as per law.