Commissioner of Cus. (import) Vs. Alcobex Metals Ltd.

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SooperKanoon Citation : sooperkanoon.com/40345

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-22-2005

Judge : J Balasundaram, Vice-, S T T.V.

Appellant : Commissioner of Cus. (import)

Respondent : Alcobex Metals Ltd.

Judgement :

1. The respondents herein have imported a consignment of 18.520 MT of Brass Scrap with ISRI specification 'Honey' valued at approximately Rs. 9.95 lakhs and filed a Bill of Entry dated 12-8-97 for clearance of the same under OGL. The goods were examined and it was found that part of the consignment i.e. about 7 MTs contained serviceable articles such as nuts, bolts, imitation jewellery etc., the import of which was not permissible except under a specific licence as per 1997-2002 Exim Policy. The imitation jewellery was found to be in the form of bangles, chains and the other items in nature of bolts, screw appeared new and unused and therefore held to be liable to confiscation. The Adjudicating Authority confiscated the goods under Section 111(d) and (m) of the Customs Act, 1962 with an option to redeem the same on payment of fine of Rs. 2.50 lakhs and also imposed a penalty of Rs. 75,000/- under Section 112(a) upon the importers. The Commissioner (Appeals) set aside the order of the Dy. Commissioner and allowed the appeal with direction that the declared value for the scrap may be accepted for assessment. Hence this appeal by the Revenue.

2. The Commissioner (Appeals) has clearly noted the finding of the Adjudicating authority that although the goods appeared new and unused, the examination report from the docks is not specific and he has extended the benefit of doubt in favour of the importer being actual user and the examination report itself being qualified by the word 'appears'. The Adjudicating authority has, therefore, not held that the goods are new and unused. However, he has blown hot and cold by holding that the goods are not freely importable since they were new and unused and hence held that ITC violation is established. Therefore, the Commissioner (Appeals) after noting contradictory findings as set out above, and also after finding that the jewellery was used after melting and therefore fitted the definition of waste and scrap as it stood during the relevant period, extended the benefit and directed the declared value of the scrap may be accepted for assessment. No satisfactory arguments, particularly in view of the findings set out by the Commissioner (Appeals) have been advanced before us to hold that confiscation and penalty are warranted. The goods have been rightly held not liable to confiscation and the importers not liable to penalty. We uphold the impugned order and reject the appeal.