

Balu India Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-13-2005

Reported in : (2006)(111)ECC586

Judge : S T C., T Anjaneyulu, S T Chittaranjan

Appellant : Balu India

Respondent : Cc

Judgement :

2. The appellants have imported a consignment of second hand disposal diesel engines of 132 pieces and claimed exemption under Notification No. 204/92-Cus dated 19.5.1992 against the Advance License dated 03.10.1994. The proper officer of Customs in terms of the Advance License did not levy any duty at the time of importation of the goods.

The appellants had claimed that the imports were for reconditioning of diesel engines from the factory and for re-exportation. After the goods were cleared on the said Advance License to their factory. However, the appellants submit that it was not found viable to recondition the imported diesel engines and they had approached the DGFT for cancellation of the license and the said license was cancelled. The question, therefore, in this case would be whether the goods which have been at the time of clearance from the Customs House, claimed exemption under Notification No. 204/92-Cus were made according to the law duty free or not. The license has subsequently been cancelled. Consequent confiscation

liability under section 111(d) of the Customs Act, 1962 and the penalty liability could be arrived at on the said diesel engines allowed to be claimed.

3. Since the condition of reconditioning of the diesel engines within the period permitted for duty free import against an advance license under the provisions of Notification No. 204/92 has not been complied with, the conditions of the notification as well as advance license are not met. The plea of the learned Advocate for the appellants that at the time of clearance they were having a valid license and therefore, no duty could be recovered from them cannot be accepted as duty liability would be exempted only if the conditions of the notification were met. It only imply re-export of the imported goods after processing and reconditioning in this case. The lower authorities, it is observed vide order impugned had ordered confiscation of the goods under subject Bill of Entry under the provisions of Section 111(d) of the Customs Act on redemption fine an option to redeem the goods by paying Rs. 12,00,000/- (twelve lakhs) was offered with the condition that the said redemption should be exercised within one month from the receipt of the order. The personal penalty of Rs. 2,00,000/-(two lakhs) on the importer was also adjudged to be levied under Section 112(a) of the Customs Act, 1962. It is found that the originally the Commissioner of Customs had ordered and determined the matter in the following terms: (i) The value of the imported goods was determined to be Rs. 10,32,000/- and duty of customs payable Rs. 3,87,000/- was demanded.

(ii) 132 engines imported were ordered to be confiscated under Section 111(d) of Customs Act, 1962 with an option under Section 125 to redeem them on payment of R.F.Rs. 10,32,000/-.

(iii) A penalty of Rs. 10,32,000/- was imposed on importer under Section 112(a) *ibid*.

4. Further, the importers have filed an appeal before the CEGAT against the above determination and the Tribunal vide order dated 4.6.1997 had set aside the order of confiscation and penalty. However, the part of demanding customs duty of Rs. 3,87,000/- was not set aside and the same was returned back for de novo consideration to the Commissioner of Customs. The CEGAT observed that (i) the

order canceling the license by DGFT was referred to but no copy thereof was available on record and (ii) the application of case law in Union of India v. Sampat Raj Dugar 1991 (58) ELT 163 (S.C.) relied for validity of license would be applicable to the appellants' case.

5. Considering the aforesaid circumstances of the case, we set aside the impugned order. The appellants are allowed to re-export the impugned goods within three months. In the event of failure to re-export, the duty would be payable by the appellants. The appeal is disposed of in the above terms. Sd/- Sd/-14-8-06(C. Satapathy) (T.Anjaneyulu) Member (T) Member (J) 5. I agree with the order portion recorded in paragraph 5 above, which was pronounced by us in the open court on 13.10.2005. In view of the delay of 10 months in recording the order, it is clarified that the three months period for re-exporting the impugned goods will run from the date of receipt of this order and not from the date the order was pronounced in the court.

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