Commissioner of Customs Vs. the Royale

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-07-2006

Judge : M Ravindran

Appellant : Commissioner of Customs

Respondent : The Royale

Judgement :

1. This appeal is directed against order-in-Appeal dt. 27-4-2005 wherein Commissioner (Appeals) set aside the absolute confiscation of the goods sought to be exported and confiscation of other goods which were sought to be exported along with these goods.

2. Considered the submissions made by both the sides and perused the records. I find from the order-in-Appeal, the Commissioner (Appeals) has come to a detailed findings in respect of that goods that were absolute confiscated, it reads as : 22. The adjudicating authority in the impugned order at para - 30 has accepted that "I am not disputing the Baby Form of Lord Ganesha" and further in para-29 mentioned that "such naked statues are available freely in this country". The seven statues of Ganesha were examined at the time of personal hearing before the appellant and it was observed that these 7 statues are in the form of "Baby Ganesha or Bal Ganesha" in crawling position. I also find that the Bal Ganesha has been mentioned in number of holy books/religious books and these books are not treated as obscene, therefore, the statues of Bal Ganesha in the shape of Crawling Baby/Bal Ganesha cannot be treated as obscene. I also find that the

definitions given in the various dictionaries to the word "obscene" cannot be applied to the naked statues of the Baby Ganesha or Bal Ganesha in crawling position. 1 reproduce some of them, obscene means: (iv) Expressing something which purity and decency forbid to be exposed 23. Notification No. 69/1950-Cus., dt. 29-7-50 as amended does not define about the obscenity and the definition of obscenity has also not been mentioned anywhere even in Indian Penal Code. Article 292 of IPC provides that a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prutent interest or if its effect is such as to tend to deprave and corrupt persons who are likely to read, see or hear the matter contained or embodied in it, except if the publication is for public goods or in the interest of science, literature, art, learning, religion or other objects of general concern. Here I find the Ganesha statue in the childhood in Baby form in crawling position does not appeal to the mind of people to attract them for lasciviousness or appeal to the prurient but it is a feelings of affection, love, worship and reverence towards a child Baby in a naked form it evokes "Vastsalya Bhava" the highest and the purest Form of affection, therefore such statues cannot be treated as obscene, which is accepted every where in common parlance. I also find that Hon'ble Apex Court have in the case MSCO Pvt. Ltd. v. UOI - held that "in absence of a definition to a word in a statute or statutory - instruments, common parlance meaning should be assigned to it".

24. I also agree with the contention of the appellant that Shri Kailash Chand Sharma, Mahant of Moti Dugnari Ganesh Mandir is not an expert to distinguish between obscene statues and other statues of God. As no certificate about his being expertise in this field, issued by the recognised institution, has been furnished by the adjudicating authority, therefore, opinion given by Shri Kailash Chand Sharma is of no use.

25. I further find that the adjudicating authority while deciding the obscenity of the seven statues has not submitted any evidence documentary or otherwise or any expert opinion of any recognised institution about obscene statues, thus seized seven statues cannot be treated as obscene, therefore seizure and confiscation of these statues are not justified. Since the seven statues of "Bal Ganesha or Baby

Ganesha" in crawling position are not obscene, therefore, seizure and confiscation of other 534 statues is also not maintainable.

3. From the above reproduced paragraph from the order-in-appeal, Id.

Commissioner has dealt with the matter in very detail manner which has come to the conclusion that the goods are sought to be absolute confiscation, I find that the revenue has not lead any contrary evidence before me, to make out a case. The only reliance placed by the revenue on the certificate of Mahant of Moti Dungari Ganesh Mandir may not be of much help, as it is not clear whether the Mahant was shown the same idols which were sought to be absolutely confiscated. Further more the respondent had produced copies of the invoices, vide which they have purchased identical kind of goods in their support. These bills were of State Government enterprises. In view of the above, the Deptt's appeal is dismissed.