Optic Electronics (India) Pvt. Vs. Commr. of Cus.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-03-2006

Judge : R Abichandani, S T T.V.

Appellant : Optic Electronics (India) Pvt.

Respondent : Commr. of Cus.

Judgement :

1. The appellant challenges the order of the Commissioner holding that the exemption granted to the appellant was not available because the appellant had failed to fulfil the condition of exemption notification and the terms of the bond executed in compliance of the terms of the notification and ordering the appellant to pay an amount of Rs. 28,75,236/- pursuant to the bond.

2. The appellant had imported "periscope night vision equipment PMK-72" for the purpose of manufacture/export of tools permitted to the appellant in terms of LOA against various bills of entry. According to the appellant, 11 sets of periscopes and their accessories were stolen from their premises in respect of which the appellant filed FIR on 12-4-2004, while simultaneously intimating about the same to the Deputy Commissioner of Customs.

3. On the strength of B-17 bond executed by the appellant, and because details of the goods were not made available to show that they were the same as reported to have been stolen and in view of the undertaking to pay duty chargeable on such goods imported by them duty free, the appellant was called upon to pay the

amount of Rs. 28,73,236/- leviable on the missing periscopes on the ground that the appellant had not fulfilled their obligation.

4. It was contended by the learned Counsel on behalf of the appellant that there was a calculation error in demanding a sum of Rs. 28,73,236/- because the duty on the value of the goods stolen was demanded for the finished goods while the duty payable on the imported goods was Rs. 15,05,623/-. It was submitted that since the goods, which were imported were stolen in the same state in which they were imported, it could not have been demanded on the value of the finished goods. It was also contended that under Section 23(1) of the Customs Act, 1962, the duty on the goods lost could not have been demanded, because even the stolen goods would be goods lost to the owner.

Reliance was placed on a decision of the Delhi High Court in Sialkot Industrial Corporation, Meerut v. Union of India and Anr. decided on 27-9-77, in which it was held that the expression "lost" or "destroyed" in Section 23 of the Customs Act, 1962 was used in the generic comprehensive sense and not in a narrow sense and that it postulated loss or destruction caused by whatsoever reason, whether theft, fire, accident including pilferage.

5. The learned authorized representative for the department submitted that the demand for Rs. 28,73,236/- was correctly made in view of the bond and the undertaking given by the appellant, and therefore, there was no valid reason to reduce the liability of the appellant to the value of the goods imported. He also submitted that under Section 23 of the Customs Act, if the imported goods have been lost otherwise than as a result of pilferage then alone duty on such goods could be remitted.

He submitted that pilferage would include theft.

6. It appears that the provisions of Section 23(1) came to be amended by Finance Act 11 of 1983 with effect from 13-5-1983 and the words "otherwise than as a result of pilferage" came to be added after the words "imported goods have been lost". The decision of the Delhi High Court on which reliance was placed was rendered much prior to the said amendment in Section 23. There is no reason to

distinguish between theft and pilferage for the purpose of interpreting the provisions of Section 23 and prima facie the expression "lost" occurring in Section 23, would not include the goods, which are stolen.

7. Having regard to the facts and circumstances of the case, we direct that the appellant should deposit a sum of Rs. 15,00,000/-(Rupees fifteen lacs only) within eight weeks from today failing which the appeal shall stand dismissed. On the amount being so deposited, there shall be waiver of the remaining amount payable under the impugned order. Post the matter for compliance on 5-6-2006.