

**Gagan Thaper Vs. Commissioner of Customs**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Apr-25-2006

**Judge :** R Abichandani, M T K.C.

**Appellant :** Gagan Thaper

**Respondent :** Commissioner of Customs

**Judgement :**

1. In this appeal, the learned Counsel places reliance on the earlier Interim Stay Orders No. S/87-90/06-Cus. dated 29-3-2006 and S/83-84/06-Cus. dated 31-3-2006 whereunder it was observed that, no duty was demanded from those applicants and that the provisions of confiscation or penalty in respect of violation relating to antidumping duty were introduced w.e.f. 2004 and since the import was prior to that date, there was a case for waiver of penalty.

2. In the present case, admittedly, the import was made prior to the year 2004 when by Finance (No. 2) Act, 2004 (23 of 2004), Sub-section (8) of Section 9A was substituted and the provisions of the Customs Act, 1962 relating to offences and penalties were also incorporated by reference for applying to antidumping duties, as they applied in relation to duties leviable under the Customs Act. The provisions of Sub-section (8) of Section 9A, prior to that substitution, incorporated the provisions of the Customs Act by reference which related to non-levy, short levy, refunds and appeals, while by the substituted portions, provisions relating to interest, offences and penalties were also incorporated.

3. In this matter, however, we find from the impugned Order that not only anti-dumping duty amounts of Rs. 1,34,80,020/- and Rs. 84,60,948/- in respect of Bill of Entry Nos. 361632 dated 19-6-2003 and 158324 dated 2-7-2003 respectively were involved, but also customs duty amounts of Rs. 8,52,377/-, Rs. 11,58,724/-, Rs. 11,13,725/- and Rs. 5,30,233/- were involved. The learned Counsel, appearing for the appellant, contended that the Commissioner has erroneously relied upon the statement of the father of the appellant recorded under Section 108 of the Act. As regards this appellant, the Commissioner, in paragraph 75(vi), has reached a finding that he was an important link in the whole chain and had abetted Shri Anil Goel (of M/s. Maya Trading Co.) by willingly becoming as his disposal man for the impugned consignment sought to be cleared on misdeclared facts.

4. Since the matter involves not only evasion of customs duty, but also anti-dumping duty, the contention that the provisions relating to offences and penalties were incorporated by reference under Section 9A(8) of the Tariff Act in the context of anti-dumping duty in 2004 only, and the import was made prior to 2004 and, therefore, penalty cannot be levied, will be valid only in the context of anti-dumping duty and not in the context of the customs duty, held to be recoverable under the impugned order. Keeping this in mind and having regard to all the facts and circumstances of the case, we direct that there shall be interim stay of the impugned Order imposing penalty on the appellant on the condition that the appellant deposits a sum of Rs. 50,000/- (rupees fifty thousand only) within six weeks from today, failing which the appeal will stand dismissed. On the amount being so deposited, there shall be waiver of the pre-deposit of rest of the amount imposed on the appellant during the pendency of the appeal.

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