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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-17-2006

Reported in : (2006)(113)ECC479

Judge : M Ravindran

Appellant : Cc

Respondent : Pidilite Industries Ltd.

Judgement :

1. This appeal is filed by the revenue against order in appeal dated 28^th February 2006 that set aside the order in original of confiscation of the goods imported by the respondent and also directed the authorities to refund the entire amount of the value of the goods seized and not the amount which was realised by the revenue during the auction.

2. The relevant fact that arise for consideration are the respondent imported consignment of mobile sets. The said consignment was detained and seized by the authorities in October 2000, subsequent to investigation. A Show cause notice was issued to the respondent proposing to confiscate the seized goods and imposing penalty. The adjudicating authority in his order absolutely confiscated the seized goods and imposed penalty on the appellants. Appellant succeeded before the Commissioner (Appeal) against said order. During the pendency of the appeal before the Commissioner (Appeals), the lower authorities auctioned the consignment and sold the same. The amount received by auction was Rs.

1,04,481/- (Rupees One lakh Four Thousand Four Hundred and Eighty One only). The respondent also made a plea before the learned Commissioner (Appeals) that the consignment having been already auctioned, they should be granted the refund of the value of the goods as ascertained when seized and not the amount which was realised by the revenue. Learned Commissioner (Appeals) allowed the appeal of the appellant and set aside the confiscation and also directed the lower authorities to refund the seizure value of the goods.

3. Considered the submissions made by both sides and perused records.

It can be seen from the impugned order that the learned Commissioner has clearly spelt out the law as settled by the higher judicial forums, in this case. The learned Commissioner (Appeals) in his findings has held as under: 11. In view of the above discussion and findings, I am of the considered view that the appellants are entitled to the seizure value of the goods. The adjudicating authority has sanctioned sale proceed Rs. 1,04,481/-. The seizure value of the goods was Rs. 3,80,000/-. Therefore, the Deputy Collector, Customs (Prev.), Lucknow is directed to pay the differential amount Rs. 2,75,519.00 within three months from the receipt of this order. Accordingly, the appeal is disposed of by modifying the Order-in-Original No. 01/Consequential Relief/2005 dated 28.01.2005, passed by the Deputy Commissioner (Prev.), Lucknow.Northern Plastics Ltd. v. Collector of Customs and Central Excise as reported in paragraph '7' has held as under: 7. As the order of confiscation of goods was held to be bad the goods were required to be returned to the owner thereof. As the order of confiscation was declared as illegal by this Court on the ground that there was no mis-declaration of the goods and that the applicant was entitled to import those goods on the O.G.L., the confiscated goods, if they had not been disposed of, would have been required to be released in favour of the applicant and the applicant could have claimed damages for the damage to the goods and loss caused to it as a result of illegal retention of the goods by the respondent. We have referred to above how the applicant was prevented by the respondent and the Hindustan Photo Films from redeeming/obtaining those goods. The goods having been sold away the respondent is now not in a position to return the goods to the applicant. As this situation has been brought about by the respondent by his own acts he cannot

now escape from the liability of returning to the applicant the money value of the said goods. If without challenging the first order passed on 31/01/1989 and the interim order passed by the Gujarat High Court in favour of the applicant on 27/04/1989 the respondent had returned the goods on the terms and conditions imposed by the Gujarat High Court then he would not have landed himself in this situation. It should have been realized by the respondent while challenging the said orders and retaining the goods in his possession that the goods were of perishable nature and that they required air conditioned accommodation.

Having made-all attempts to prevent the release of goods in favour of the applicant the respondent cannot now contend that the applicant and not he was really responsible for deterioration of the goods and the consequent less realization of price.Kailash Ribbon Factory Ltd. v. Commissioner of Customs & Central Excise, New Delhi as reported has held as under: Order of High Court - Auction of confiscated goods - Respondents, not having been diligent in discharging their duties directed to issue an official circular to all concerned officials/relating to obtaining prior permission of the concerned Court or Tribunal where appeal pending, and after obtaining them sending individual notices of auction to concerned parties - Article 226 of Constitution of India. - From various judicial orders we gather that this lapse is being repeated in a large number of cases, therefore, we are constrained to observe that the respondents have not been diligent in discharging their duties. The respondents are directed to issue an official circular within four weeks to all the concerned official that the confiscated goods which are the subject matter of appeal before any Tribunal or Court shall not be auctioned or disposed of without prior written permission or order from the concerned Tribunal of the court. After obtaining necessary permission if the authorities decide to auction the goods, then individual notice to the concerned parties is imperative. We are clearly of the opinion that the respondents have committed a serious blunder by auctioning the goods which were subject matter of appeal without prior permission of the concerned appellate Court.

6. It is also brought to my notice that the Central Board of Excise and Customs vide its circular No. 711/4/2006-Cus. (AS) dated 14^th February, 2006 had directed as under: Subject: Requirement of issuing Notice to the owner of goods -

Provisions of Section 150 An instance has recently been brought to the notice of the Board where seized goods were disposed of without issuing notice to the owner of the goods. The seizure having been set aside by the adjudicating authority, the owner of the goods sought their return but was advised to obtain the sale proceeds, which were significantly lower than the seizure value. In subsequent proceedings, the High Court has directed the refund of an amount higher than the sale proceeds, as well as payment of interest. The loss to the exchequer has resulted from a failure to comply with the requirements of Section 150 of the Customs Act, 1962.

2. It is impressed upon field formations that where any goods, not being confiscated goods, are to be sold under any provision of the Customs Act, they shall be sold by public auction or by tender or in any other manner after notice to the owner of the goods.

3. It is further clarified that the requirement to issue notice to the owner of the goods shall also obtain in case of goods that have been confiscated but in respect of which all appeal/legal remedies have not been exhausted by the owner of the goods.

7. It can be noticed from decision of the Hon'ble Supreme Court's in the case of Northern Plastics and Hon'ble High Court of Delhi and the circular of the CBEC that before disposing the seized/confiscated goods, a notice has to be issued to the owner before the disposal. In the present case before me, the lower authorities have not issued any notice to the respondent before disposing the seized/confiscated goods.

8. In view of the fact and circumstances of the case, the impugned order is correct in law and does not require any interference. The appeal filed by the revenue is dismissed. Since the cross-objection filed by the respondent is in support of the order in appeal, the same is also disposed of.

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