

Commissioner of Cus. (import) Vs. Haryana General Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-17-2006

Reported in : (2007)(212)ELT36Tri(Mum.)bai

Judge : A T K.K.

Appellant : Commissioner of Cus. (import)

Respondent : Haryana General Industries

Judgement :

1.This is the revenue's appeal. The facts of the case are that the respondent M/s. Haryana General Industries imported a consignment of Electrolyte Tin Plate Sheets Waste/Waste, the import of which required pre-shipment inspection certificate from the specified agency as per the Import Export Policy. The appellants produced pre-shipment certificate from BSI Inspectorate America Corporation which was not specified and only BSI Inspectorate Limited Essex England was the certified agency. It was further observed that even this BSI Inspectorate Ltd. Essex England was black listed by the CBEC and therefore with option to release on payment of redemption fine of Rs. 2,75,000/- and a penalty of Rs. 50,000/- was imposed. On appeal the Commissioner (Appeals) set aside the order of the original authority on the ground that the appellants were not in the know that the agency has been black listed and the consignment was shipped prior to the black listing of the inspection agency. The revenue has come in appeal against this order on the ground that the certificate produced by respondent was not from the specified agency as it was from BSI Inspectorate America

Corporation instead of Essex England.

2. The learned Advocate for the respondent submits that in this case 100% examination of the goods was carried out and the same was also certified by the local inspection agency and no contraband was found.

The scrap conformed to the specifications laid down in the policy and therefore there has been no violation. The pre-shipment certificate produced by them is from BSI only which is one of the specified agency and they did not know that BSI Inspectorate America Corporation was not recognised agency. In view of the same they pleaded leniency and requested for unconditional release of goods without any fine and penalty.

3. I have considered the submissions. I find that since BSI Inspectorate America Corporation is not one of the specified agency there has been a violation of the policy and therefore the goods are liable to confiscation under Section 111(d) of the Customs Act, 1962.

However, looking into totality of the circumstances in which the consignment was imported and the fact that nothing contraband was found and an inspection certificate from BSI was furnished, I am inclined to consider this as an offence of technical nature without any mala fide intent and accordingly reduce the redemption fine from Rs. 2,75,000/- to Rs. 10,000/- only and penalty from Rs. 50,000/- to Rs. 2,500/- only.

Appeal is partly allowed in above terms.

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