Commissioner of C. Ex. Vs. Overseas Electronics

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-01-2007

Judge : M Ravindran

Appellant : Commissioner of C. Ex.

Respondent : Overseas Electronics

Judgement :

1. This appeal is filed by the Revenue against the order-in-appeal dated 27-7-2006 which set aside the order-in-original and allowed the appeal of the Respondent.

2. Heard both the sides and perused the records. The issue involved in this case is regarding the seizure of mobile phones by the authorities from the respondent. The department's contention is that the respondent is unable to produce any documents for the licit possession of these mobile phones. On careful perusal of the impugned order, it is seen that the learned Commissioner (Appeals) has given a detailed finding which are as under: 5. On a careful consideration of the submission made by the appellants in their appeal memo, I find that the issue in this appeal relates to confiscation of foreign origin mobile phones rechargeable lanterns and 2 VCRs due to non-production of documents showing licit acquisition. The Adjudicating Authority has confiscated the mobile phones etc., all of foreign origin, on the ground that the suppliers have denied to have sold the goods as claimed by the appellants. However, the appellants have pleaded that whatsoever may be the reason, the goods seized from them cannot be treated as smuggled goods as they were purchased within India. The department has also not

produced any evidence about their smuggled nature. Furthermore the goods in question are neither prohibited nor notified, under Section 123 or Chapter IVA of Customs Act, 1962 and are freely importable under Open General Licence and are also freely available in the market. In my previous Order-in-Appeal Nos.

261-262, dated 17-7-2006 involving a similar issue, relying upon the Tribunal judgment in V. Muniyandi v. CC, Chennai and Sadbhavana v. CC, Indore (supra) and Board's Circular dated 14-12-65, I have already held that non-notified/non-prohibited goods could not be confiscated unless the department proves their smuggled nature.

Therefore, I have no hesitation in holding that the confiscation of the mobile phones etc. vide the impugned order dated 22-5-2006 is not legally sustainable and therefore, the same is set aside.

3. It can be noticed from the reproduced findings that the Revenue has not been able to conclusively prove that the said goods were smuggled by the respondent herein. In the absence of any conclusive evidence as to the involvement of the respondents in smuggling activity, the impugned order setting aside the order-in-original is correct and does not require any interference.

4. Accordingly in the facts and circumstances of the case, the appeal filed by the Revenue is dismissed.