

Commissioner of C. Ex. Vs. Tokyo 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 : Tokyo Electronics

Judgement :

1. These two appeals are filed by the Revenue against the order-in-appeal dated 17-7-2006 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 both the respondents. The department's contention is that the respondents are unable to produce any documents for the illicit 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: 6. On a careful consideration of the submission made by the Appellant in their appeal memo, I find that the issue in both the appeal relates to confiscation of foreign origin mobile phones due to non-production of documents showing licit acquisition. In the Tokyo Electronics case, 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 pieces as mentioned in the bills submitted by the Appellant but have sold the mobile phones of different IMEI numbers. In two cases the addresses supplied by

the appellant turned out to be fake/non existing. However, the appellant has pleaded that whatsoever may be the reason, the goods seized from the Appellant 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. As has been held, by the Tribunal in the case of V. Muniyandi v. CC, Chennai, cited by the appellant, unless the three ingredients-including importation contrary to any prohibition or restriction are proved by the department, the offence is not established and therefore it has to be concluded that the burden cast on the authorities to prove the smuggled nature has not been fulfilled. I also find that the Board's circular dated 14-12-1965 mentioned in the Muniyandi case is quite relevant to this case involving town seizure. In the instant case the mobile phones involved are non-notified goods and are freely importable under Open General Licence and are also freely available in the market. Further the judgments relied upon by the Adjudicating Authority i.e. Kanungo & Co. v. CC, Calcutta and CC, Madras v. D.B. Bhoormull are entirely distinguishable because they relate to seizure of notified prohibited goods and confiscation under the Customs Act read with Imports and Exports (Control) Act, 1947. Moreover, the case laws mentioned by the Adjudicating Authority in the order mostly relate to confiscation of Gold, Silver, Diamonds etc. which are not freely importable into the country and are in the nature of restricted goods, not freely importable. Therefore applying the ratio of the Tribunal's decision in the case of V. Muniyandi (supra) and Sadbhavana v. CC, Indore (supra) cited by the appellant read with the Board's Circular dated 14-12-1965, I have no hesitation in holding that the confiscation of the Mobile phones etc. vide the impugned order dated 4-5-2006 is not legally sustainable and therefore the same is set aside with consequential relief to the appellant. In this case the appellant has also alleged that the Show cause notice was not served in time, but I am not discussing this aspect as the appeal is being allowed on merits. (The extracts of the Board's circular dated 14-12-65 as reproduced in V. Muniynadi's case is enclosed as Annexure I).

7. In the case of Chander Kumar Paryani, the Adjudicating Authority has confiscated the 48 mobile phones of foreign origin on the ground that the supplier

has denied to have sold the pieces as mentioned on the courier package received from Chennai. In this case also the Adjudicating Authority has relied upon the Apex Court judgments namely *Kanungo & Co. v. CC, Calcutta* and *CC, Madras v. D.B. Bhoormull* as well as many other judgments of the Tribunal, wherein the aforesaid two judgments of the Apex Court have been relied upon to confiscate the mobile phones. However, as already mentioned above, the Tribunal decisions mentioned by the Adjudicating Authority in the order mostly relate to confiscation of Gold, silver, diamonds etc. which are not freely importable into the country and are in the nature of restricted goods and not freely importable. The mobile phones involved in this case are however non-notified goods and are freely importable under Open General Licence and are also freely available in the market. Further, the judgments relied upon by the Adjudicating Authority i.e. *Kanungo & Co. v. CC, Calcutta* and *CC, Madras v. D.B. Bhoormull* are clearly distinguishable in the facts of this case because the seizure in those cases are of notified/prohibited good and confiscation was under the Customs Act read with Imports & Exports (Control) Act, 1947. Therefore, applying the ratio of the Tribunal's decision in the case of *V. Munujandi (supra)* and *Sadbhavana v. CC, Indore (supra)* cited by the Appellant, read with the Board's Circular dated 14-12-1965,¹ have no hesitation in holding that the confiscation of the mobile phones etc. vide the impugned order dated 17-5-2006 is not legally sustainable and therefore the same is set aside with consequential relief to the appellant.

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 respondents 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 appeals filed by the Revenue are dismissed.