Associated Traders and 2 ors. Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-07-1988

Reported in : (1988)(18)LC41Tri(Delhi)

Judge : H Chander, R T I.J., P a K.

Appellant : Associated Traders and 2 ors.

Respondent : Collector of Customs

Judgement :
1. The above captioned applicants have filed three appeals as well as three slay applications which arise from a consolidated order-in-original No. S/10-83/87 SIIB-DRI/BZU/122/43/86 dated 25th January, 1988. Since the three slay applications emerge from the same order and as such the same are being disposed of by a consolidated order.

2. Shri A.K.S. Bedi, the learned advocate who has appeared on behalf of the applicants states that prima facie the applicants have got a good case on merits. He has also referred to the balance-sheets of the three applicants and States that financially the applicants do not have sound position and there are losses too. He argued that the Bench should exercise its inherent powers and should also permit the release of the goods without payment of redemption fine and customs duty.

3. Shri A.S. Sunder Rajan, the learned junior departmental representative who has appeared on behalf of the respondent, states that the applicants have filed

applications under Section 129E of the Customs Act, 1962 and the goods are under the control of the custom authorities and as such no slay application lies in icons of the provisions of Section 129E. He has pleaded for the dismissal of the stay applications.

4. We have heard both the sides and have gone through the facts and circumstances of the case. Before we proceed further, we would like to give our observations in view of the provisions of Section 129E of the Customs Act, 1962. Section 129E of the Customs Act, 1962, is reproduced below: 129E. Deposit, pending appeal, of duly demanded or penalty levied.-Where in any appeal under this chapter, the decision or order appealed against relates to any duly demanded in respect of goods which are not under the control of the customs authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the proper officer the duly demanded or the penalty levied: Provided that where in any particular case, the Collector (Appeals) or the Appellate Tribunal is of the opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, the Collector (Appeals), or, as the case may be, the Appellate Tribunal may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue.

A simple perusal of the section shows that the section has to be read in two parts, firstly, where the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of the customs authorities and secondly, against imposition of any penalty levied under the Act. In the matter before us, the goods are under the control of the Customs authorities. Accordingly, the provisions of Section 129E of the Customs Act, 1962 are not applicable for the release of the goods without payment of fine in lieu of confiscation and duty. The particulars of fine, duty and penalty in the above three captioned appeals are as under:1. M/s. Associated Traders, Rs. 2,65,000/- 1,30,000/- 1,19,750 Hoshiarpur2. M/s. Sarvodya Resin Works 1,60,000/- 80,000/- 72,080/- Hoshiarpur3. M/s. Prabhat General Turpene, 2,65,000/- 1,30,000/- 1,19,750/- Hoshiarpur During the course of arguments, the Bench had pointed out to Shri Sunder Rajan that Section 129E has to be read in two parts. To this Shri Sunder Rajan, the learned junior departmental representative, fairly said that if redemption fine and duty are considered separately from the penalty, he has got no objection to the passing of the appropriate orders by the Bench on penalty only. He had also said that it is not a fit case where the Tribunal should exercise its inherent powers in granting the stay for redemption fine duty and Shri Bedi had pleaded that this Tribunal should exercise its inherent powers.

5. We have gone through the facts and circumstances. We feel that these are not fit cases where the Tribunal should exercise its inherent powers in granting the stay in respect of the payment of redemption line and the duty on the goods imported. Accordingly, the prayer of the applicants for granting stay in all the above captioned three mailers in respect of redemption fine and payment of duty is rejected. For penalties, the Bench feels that if the applicants are desired to make the deposit of full penalty amounts, it will amount to undue hardship.

Accordingly, we dispense with the predeposit of the penalty amount of M/s. Associated Traders, M/s. Sarvodya Resin Works and M/s. Prabhat General Turpene on the condition of their depositing Rs. 20,000/-, Rs. 12,000/- and Rs. 20,000/- respectively. The applicants are directed to deposit these amounts within eight weeks from the receipt of this order. In case the applicants fail to comply with the terms of this order, the stay order shall stand automatically vacated.

6. During the course of arguments, Shri A.K.S. Bedi, the learned Advocate, had made an alternative prayer for early hearing. Since the goods are under detention, we feel that there is justification for early hearing of the appeals. After the applicants comply with the terms of this order, the applicants may approach the Tribunal for the grant of early hearing.