

Cc Vs. Faisal

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-09-2007

Reported in : (2007)(121)ECC219

Judge : T Anjaneyulu

Appellant : Cc

Respondent : Faisal

Judgement :

1. Heard the Id. JDR. At the stage of admission itself the merits of this appeal have been heard through the Id. JDR Shri Jadhav. The facts of the case are that the authorities concerned have seized certain quantity of toys of Chinese made under the reasonable belief that they were smuggled in nature and the owners of the goods have failed to produce any documentary proof to show for its legal import. On adjudication of the matter the Assistant Commissioner. Mumbai recorded a finding that the respondent herein viz. Shri Faisal Abdul Gaffar Mewawala cleared foreign made toys of Chinese original valued at Rs. 5760/- without any proper documentation for its legal import.

Accordingly the goods were ordered to be confiscated under Section 111(d) of the Customs Act, 1962 with an option to redeem the same on payment of fine of Rs. 3,000/-. He also imposed personal penalty of Rs. 5,00/- under Section 112(b) of the Customs Act, 1962.

2. However, the department not being satisfied with the penalty imposed under Section 112(b) of the Customs Act 1962, filed an appeal before the Commissioner of Customs (Appeals), Airport, Mumbai for enhancing penalty under Section 112(ii) of the Customs Act, 1962. Section 112(ii) of the Customs Act, 1962 reads as follows. "(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the value of the goods or five thousand rupees whichever is the greater." Ld. JDR contends that the Commissioner of Customs (Appeals).

Airport made an observation that the department has not made any specific request for enhancing penalty and Section 112 of the Customs Act, 1962 does not prescribe any minimum penalty hence any penalty imposed under Section 112 of the Customs Act, 1962 is in accordance with law.

3. Ld. JDR contends that the Commissioner (Appeals) ought to have imposed minimum penalty of the duty payable of the goods worth Rs. 760/-. In case if such duty is fall short of Rs. 5,000/-, the minimum penalty is Rs. 5,000/-. Therefore, the (sic) of the above referred provision is involved as such he prayed for admission of the case.

4. As seen from the findings of the Id Commissioner (Appeals), it is observed that the department has not discharged onus lie upon it in proving the smuggled nature of the goods and the officers were under the reasonable belief that the goods were smuggled goods, when they seized. Further, he observed that shifting of the burden on the person who cleared the goods is not legally done. These observations imply that the Commissioner (Appeals) has not continued the confiscation of the goods. On the contrary, this finding is reversal of the finding of the Assistant Commissioner who has ordered for the confiscation of the goods. Ld. JDR contends that he above observation cannot be taken as relevant since the appeal filed by the department before the Commissioner (Appeals) confines to only for enhancement of penalty. On the other hand, the Commissioner observed that there was no request by the department for enhancing the penalty. On being questioned by this Bench to show the appeal papers, the Id. JDR shown the same. While reviewing the impugned order passed by the Assistant Commissioner the point is framed for correct determination of the penalty under Section 112 of the

Customs Act, 1962. Obviously this point covers either for enhancement of the penalty or imposition of the minimum penalty as prescribed under the relevant provision. In view of the observations made by the Commissioner (Appeals), and as there is no ultimate finding about setting aside the confiscation of the goods on the observations made by him, and as there is no correct appreciation of the point framed for imposition of the penalty Section 112 of the Customs Act, 1962. It is felt expedient to remand this matter back to the Commissioner (Appeals) with the following directions. (sic) it would lie with in the propriety of the Commissioner (Appeals) to go into the question of confiscation order when the department has filed appeal confining to the imposition of penalty amount only. If the Commissioner (Appeals) is empowered to go into the correctness of the finding of the confiscation of the goods, there is no operating portion ultimately as to the confirmation or setting aside of the impugned order. The department relied upon for correct determination of the penalty on under Section 112(ii) of the Customs Act, 1962. Therefore, it is to be seen that whether it is invocable for the offence committed under Section 112(b) of the Customs Act, 1962, in case confiscation held to be illegal. Accordingly the matter is remanded back to the Commissioner (Appeals) for determination of the above referred points. Appeal disposed off accordingly.

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