Commissioner of Central Excise Vs. Shri Narayan Das

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-10-2007

Reported in : (2008)(125)ECC74

Judge : R Abichandani

Appellant : Commissioner of Central Excise

Respondent : Shri Narayan Das

Judgement :

1. The Revenue challenges the order of the Commissioner (Appeals) made on 15.11.2006 upholding the order of the adjudicating authority by which penalty of Rs. 2000/- was imposed on the respondent under Section 112(b)(ii) of the Customs Act, 1962 on the ground that penalty lower than the prescribed minimum of Rs. 5000/- could not have been imposed on the respondent.

2. The respondent was apprehended carrying goods of foreign origin on 10.11.2003 at the railway station while coming out of the platform. The respondent could not produce any bills in respect of the goods of foreign origin. Even during the hearing before the adjudicating authority, the respondent failed to produce any document in support of valid import of the seized goods. The adjudicating authority found that the goods (calculators and other electronic goods) were illicitly imported into India and were liable to confiscation under Section 111(d) of the Act. It was found that the impugned goods were recovered from the possession of the respondent. He was, therefore, held to be liable to penalty under Section 112(b)(ii)

of the Act. The adjudicating authority imposed a penalty of Rs. 2000/- on the respondent, which was upheld by the Commissioner in the appeal filed by he Revenue.

3. In the present appeal, it has been contended on behalf of the Revenue that penalty of less than of Rs. 5000/- could not have been imposed in view of the minimum prescribed by the provisions of Section 112(b)(ii) of the Act. The learned authorized representative for the department relied on the decision of a Division Bench of this Tribunal in Bharat Petroleum Corporation v. CCE, Cochin, in which it was held in paragraph 4 of the judgment that the minimum penalty prescribed under Rule 173Q(1) was of Rs. 5000/-. Reliance was also placed on the decision of the Tribunal in CCE, Lucknow v. Sarjoo Sahakari Chini Mills Ltd., reported in 2006 (204) ELT 478 rendered in the context of Rule 173Q having similar wordings. It was held in paragraph 11 of the judgment that, the provisions of Rule 173Q under which the maximum of the penalty not exceeding three times of the value of excisable goods in respect of which any contravention of the nature referred to in Clause (a) or Clause (b) or Clause (bb) or Clause (bbb) or Clause (c) or Clause (d) had been committed or Rs. 5000/-, whichever is greater shall be imposed. It was observed that, where three times of the value of excisable goods was less than Rs. 5000/- then the penalty imposed would be Rs. 5000/- and if it was more than Rs. 5000/-, then such greater amount would be imposed. It was, therefore, held that, penalty of Rs. 5000/- prescribed in Rule 173Q(1) would constitute minimum penalty required to be imposed in such cases. Section 112(b)(ii) of the Customs Act, 1962, provides that if any person who acquires possession of any act as contemplated in Clause (b) in respect of goods which he knows or has reason to believe are liable to confiscation, shall be liable, in case of dutiable goods other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or Rs. 5000/-, whichever is greater.

3.1 On the parity of reasoning adopted in the aforesaid decisions in CCE, Lucknow v.Sarjoo Sahakari Chini Mills Ltd. (supra), penalty, even under the provisions of Clause (b)(ii) of Section 112 of the Customs Act, 1962, could not have been less than Rs. 5000/- which is the minimum penalty prescribed under the said provision. The impugned order to the extent it imposes penalty lower than Rs. 5000/- is, therefore, set-aside and penalty of Rs. 5000/- is imposed on the respondent under Section 112(b)(ii) of the Customs Act, 1962. This appeal is, accordingly, allowed.