

Cc (Prev.) Vs. Rose Enterprises

Cc (Prev.) Vs. Rose Enterprises

SooperKanoon Citation : sooperkanoon.com/46323

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-23-2007

Reported in : (2008)(125)ECC185

Judge : R Abichandani

Appellant : Cc (Prev.)

Respondent : Rose Enterprises

Judgement :

1. The Revenue has appealed against the order dated 31.01.2007 passed by the Commissioner (Appeals) to the extent that it has reduced the redemption fine of Rs. 2 lacs in lieu of confiscation as imposed by the adjudicating authority to Rs. 25,000/- and the penalty of Rs. 1 lac to Rs. 10,000/-.

2. The facts are not in dispute. Both the authorities below have concurrently found that, the imported goods (20936 kgs. of old and used worm clothings) were declared to be of the value of Rs. 3,11,404.80, but their assessable value was Rs. 5,96,676/-. The said assessable value was acceptable to the importer. It has also not been contested that the goods were imported without the required licence/permission.

The import of the goods was not allowed without the required licence/permission. The goods were imported in contravention of the Foreign Trade Policy 2004-09. The importer had accepted the assessable value proposed by the appraising

Officer. The authorities have, therefore, rightly held that, the goods were liable to be confiscated and penalty was required to be imposed.

3. The importer had pleaded for a lenient view despite its being in the knowledge of the fact that the goods imported were restricted under the policy and could not have been imported without licence/permission. The adjudicating authority observing that, the rationale of imposing redemption fine and penalty was to penalise the importer to the extent that not only the margin of profit is reduced to almost negligible, but also to dissuade the importer from making future imports of such goods, the import of which was restricted, ordered confiscation of the imported goods valued at Rs. 5,96,676/- under Section 111(d) of the Customs Act, 1962, giving an option to the importer to release the goods on payment of fine of Rs. 2 lacs. Penalty of Rs. 1 lac was imposed on the importer under Section 112 of the Act.

4. The Appellate Commissioner, before whom only the redemption fine and penalty was challenged by the respondent, while accepting the valuation of the goods and upholding confiscation, reduced the redemption fine to Rs. 25,000/- and penalty to Rs. 10,000/-.

5. The short question that arises in the present appeal is, whether reduction of the redemption fine and penalty, as imposed by the adjudicating authority, was justified in the facts and circumstances of the case.

6. The power to determine redemption fine and the quantum of penalty cannot be arbitrarily exercised in either direction. There are already guidelines incorporated in the provisions of Section 125(1) of the Customs Act, 1962, to the effect that the redemption fine shall not exceed the market price of the goods confiscated, less, in the case of the imported goods, the duty chargeable thereon. In the context of this provision, a Division Bench of this Tribunal in the case of Jagson International Ltd. v. Commissioner of Customs, Delhi reported in 2006 (199) ELT 553 (T-Del), has held that, there would be justification for imposing fine in lieu of confiscation which is to the extent of market price of the goods confiscated, in the following terms: 11.1 Section 125 of the said Act provides for option to pay fine in lieu of confiscation. Under the proviso to Section 125(1), it is, inter alia, provided that

such fine shall not exceed the market price of the goods confiscated, less, in the case of imported goods, the duty chargeable thereon. Under Sub-section (2) of Section 125, where any fine in lieu of confiscation of goods is imposed under Sub-section (1), the owner of such goods or the person referred to in Sub-section (1) shall, in addition, be liable to any duty and charges payable in respect of such goods. By Section 126 of the Act, it has been provided that if any goods are confiscated under this Act, such goods shall thereupon vest in the Central Government, and that the officer adjudging confiscation shall take and hold possession of the confiscated goods. Since by virtue of confiscation, the goods vest in the Central Government, there is a clear justification for imposing fine in lieu of confiscation which is to the extent of market price of the goods confiscated. In other words, the rationale behind this provision lies in giving the equivalent in terms of the value of the goods to the Central Government which would become the owner of the goods by virtue of confiscation. This rationale is required to be kept in mind while considering the ambit of the discretion that may be exercised by the adjudicating officer while fixing the amount of fine in lieu of confiscation to enable the owner of the goods to exercise the option. Ordinarily, the assessing officer has to ascertain the market value of the offending goods, but no enquiry would be necessary where the fine to be imposed is equivalent to the CIF value of the goods, as the market value is normally more than the CIF value of the goods plus duty.

6.1 The value of the goods assessed at Rs. 5,96,676/- was never challenged and was, in fact, accepted by the importer. If that be so, the redemption fine of Rs. 2 lacs, as imposed by the adjudicating authority, was far below the market value of the goods. There is no valid reason given by the Commissioner (Appeals), as to why has he chosen to interfere with such a lenient order of imposition of redemption fine passed by the adjudicating authority. The interference by the Appellate Authority would not be warranted in such cases in the absence of any illegality or irregularity or impropriety committed by the adjudicating authority in making the order. In the present case, the market price of the goods imported in violation of the foreign trade policy was Rs. 7.33 lacs and duty chargeable was worked out to Rs. 1,03,000/-. Therefore, redemption fine upto Rs. 6.30 lacs was imposable under Section 125 of the Act. The redemption fine of Rs. 2 lacs

imposed by the adjudicating authority was, therefore, leaning on the lenient side. The Appellate Commissioner has, therefore, arbitrarily interfered with the order of the adjudicating authority imposing redemption fine of Rs. 2 lacs in respect of the goods assessed at Rs. 5,96,676/- and its order cannot be sustained.

7. Penalty of Rs. 1 lac was imposed by the adjudicating authority after reaching a finding that, the importer had despite having the knowledge that the goods imported were restricted under the Policy, imported them without the required licence/permission. He has given valid reasons, in paragraph 11 of his order, for imposing the penalty of Rs. 1 lac under Section 112 of the said Act. Penalty not exceeding the value of the goods could be imposed in the case of the goods in respect of which any prohibition is in force under the said Act or any other law for the time being in force. In the present case, the goods were imported against the Foreign Trade Policy under which they were restricted goods and it could not have been imported without obtaining a valid licence/permission from the competent authority. Therefore; the penalty could have been imposed upto the value of the goods which was Rs. 5,96,676/-. Even if the goods were to be treated as "other than prohibited goods" covered by Clause (ii) of Section 112 of the said Act, penalty could have extended upto the duty sought to be evaded, which in the present case was Rs. 2,85,271/-. Therefore, by no stretch of imagination, the penalty of Rs. 1 lac imposed by the adjudicating authority could have been treated as unjustified, much less harsh.

8. For the foregoing reasons, the order of the Appellate Commissioner interfering with the redemption fine and penalty as imposed by the adjudicating authority has been arbitrarily made without proper application of mind.

9. The impugned order is, therefore, set aside and the order of the adjudicating authority is restored. The appeal is accordingly allowed.

(Dictated and pronounced in the open Court on the 23RD day of October, 2007)

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com