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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-02-1983

Reported in : (1983)LC2102DTri(Delhi)

Appellant : Ashok Narang

Respondent : Collector of Customs

Judgement :

1. This is an appeal against the order in revision dated 23rd September, 1982 passed by the Additional Collector of Customs, Delhi Airport, under Section 130 of the Customs Act, 1962, as it stood at the relevant time.
2. It would appear that the Appellant brought, on his arrival on or about 11-3-1982, four items of personal household effects, out of which a National Panasonic Video Camera and National Panasonic VCR were not given the benefit, in adjudication, of the Transfer of Residence Rules, by the Assistant Collector, on the ground that the Appellant's father and not 'the Appellant himself was the owner thereof.
3. The Appellant's father would appear to have arrived subsequently on 25-4-1982.
4. On his arrival the Appellant and his father would appear to have applied for a revision of the adjudication order.
5. In the order in revision the Additional Collector of Customs held that- (a) a scrutiny of the invoices revealed that the goods in question were purchased for

export to India and were taken delivery of, directly, by the shipping agents and no local tax (VAT) was paid, since they were meant for export and not for use in England; (b) a certificate dated 11-8-1982, produced by the father of the Appellant from the Shipping agent, to the effect that the aforesaid goods were taken delivery of from the seller and handed over to the Appellant's father on the same day, cannot be believed since- (i) the certificate does not indicate the date on which the goods were collected by the shipper; and (ii) in the course of a letter dated 24-8-1982, the Appellant's father had stated that they were purchased by him, personally, contrary to a delivery to a shipping agent for export to India as set forth in the invoices.

(a) there is no indication in the record of the proceedings that the goods had been found to be new or unused for the requisite period in terms of the T.R. Rules; (b) the cash vouchers prove the acquisition on 21-11-1980 i.e. more than a year prior to arrival of the Appellant; (c) accordingly by virtue of acquisition on the aforesaid day and the fact of absence of visible signs of non-user the goods are entitled to the benefit of T.R. Rules; (d) the rejection of the benefit of T.R. Rules earlier in adjudication on the arrival of the Appellant was not proper, since, it is, after all a case where the aforesaid goods forming part of the baggage was sent in advance through the Appellant who happens to be the son of the owner; (e) the endorsement on the invoices giving directions for delivery to Globe Shipping Services Ltd. was made only with a view to avoid payment of VAT (the invoices show VAT at zero per cent) and in actual fact, however, the goods were delivered on the very day of the purchase to the Appellant's father by the shipping agent, as would appear clear from a certificate given by the shipping agent.

7. Shri Ramanathan, the learned representative of the Respondent pointed out that denial of T.R. concession to the Appellant when he arrived on 11-3-1982 was correct because as per the documents he was not the owner of the goods. He was, however, advised to keep these items with the customs on the undertaking that the same could be got released under the Baggage Rules when the owner of the goods i.e. the father of the Appellant would arrive in India. With regard to the order passed by the Additional Collector, Shri Ramanathan pointed out that the learned Additional Collector was justified in taking a view that the endorsements

on the vouchers clearly show that the goods had been purchased on the dates shown therein but they were all along lying in the custody of the Globe Shipping Services. In other words, they were never in the use of the Appellant. On this ground the concession of Transfer of Residence Rules was rightly denied to these two articles.

8. We have given our most anxious consideration to the case. Admittedly : - (ii) they were to be delivered to M/s. Globe Shipping Services Ltd. ; and (iii) no VAT was added to the price because they were ostensibly meant for export immediately.

10. Had it not been for the (iii) supra, we would have readily presumed from the acquisition and possession, the user of the said articles for the requisite period in accordance with the ruling in B.K. Krishnani v. Collector of Customs SL Central Excise, New Delhi (1983 E.L.T. 1130), but then, the invoice itself would show that it was not delivered to the Appellant's father but to a shipping agent for export. This is a circumstance analogous to the illustrations furnished in the judgment in the aforesaid Krishnani's case which improbabilises and refutes the inference of user for the requisite period. The certificate from the Shipper was dated 16th December, 1982, i.e. much after the arrival of the Appellant and his father and were not inclined to put much reliance on it as a piece of evidence in the context of the facts and circumstances of the case. Nor does the failure of the Assistant Collector to make any remark about the signs of use of the goods in question necessarily lead to a presumption regarding its use when for a fact he was disposing of the case on the short ground that the Appellant was, admittedly, not the owner of the goods.

11. Going by the invoices, it does not appear that the Appellant had the use of the articles for the requisite period. Nor can it be said that they had the "right to use" (placing a wider construction upon the word 'use' occurring in Rule 2 of the T.R. Rules) for the requisite period, seeing that they had not purchased the goods for use in England, 12. The Appellant himself could not claim the benefit of T.R. Rules and the adjudication order was correct.