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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-03-1990

Reported in : (1990)(30)LC566Tri(Delhi)

Judge : B T S.K., D Vasavada

Appellant : Jespal Singh

Respondent : Collector of Customs

Judgement :

1. This is a stay application filed with reference to the order of the Additional Collector of Customs, New Delhi dated 21.2.1990.

2. The learned Counsel stated that on 6.10.1988 the Customs staff visited two premises. At one of these premises they found the truck DIL 5606 also standing and on the statement of a co-accused presumed it to be the truck of one of the co-accused Shri Joginder Singh and seized the same under the impression that it was used to carry contraband.

3. As soon as the appellant came to know about the seizure of the truck, he immediately wrote to the Customs authorities a letter dated 17.10.1988 claiming that he is the owner of the truck and requesting for release of the same. However there was no response. He again sent a letter to the Assistant Collector (Preventive) on 20.2.1989.

4. In spite of it neither any show cause notice was issued to him nor any personal hearing was granted to him and the truck has been confiscated but allowed to be redeemed on payment of a fine of Rs. 50,000A.5. It was his submission that while the proceedings against other co-accused were on, he presented himself before the adjudicating authority and showed the papers including the registration certificate, etc., and the adjudicating authority was good enough to accept the fact of his ownership as would be apparent from the operative portion of the order in original. He has also mentioned that the appellant was not involved in any manner.

6. The truck was the sole source of income of the appellant and since it was seized and subsequently confiscated he is in great difficulty and is finding it difficult to make both ends meet. He has not been able to get the truck released as he was not able to pay the fine of Rs. 50,000/-.

7. It was also his contention that actually no contraband was recovered from the truck and it had not been used for transport of seized contraband and no violation of the Customs Act has been committed and the department had merely relied on the statement of the co-accused. In the circumstances, the truck was not liable to confiscation.

8. In any eventuality in the circumstances stated by him, he was not in a position to get it released on payment of a fine of Rs. 50,000/- and he would pray that the truck may be ordered to be released without payment of fine in cash. He is prepared to give some surety or security if so directed.

9. The learned SDR stated that it is true that the learned Additional Collector in the operative portion of his order has accepted that the truck belongs to the appellant and had also stated that the appellant was not involved in any manner but it is not clear as to when exactly the claim was made. Furthermore a redemption fine only has been imposed and it was open to the appellant to have got the truck released on paying the amount imposed as fine and in the normal course a question of stay or waiver of pre-deposit does not arise in such cases. However if the Tribunal is so inclined, then, some direction may be given to take care of the Revenue interest and a Bank guarantee or a surety or security may at least be taken.

10. He however accepts that no show cause notice appears to have been issued to the appellant and in the circumstances he has no objection if either early hearing is granted or the matter is remanded.

11. The learned Counsel stated that he has no objection if an early hearing is posted and also has no objection if the matter is remanded.

12. We have considered the submissions of both the sides. We find that admittedly no show cause notice was issued to the appellant and no personal hearing was granted in spite of the fact that the authorities realised that the truck belonged to the appellant and accepted his ownership. We also note that the learned Additional Collector has stated that there was no evidence about the involvement of the owner Shri Jespal Singh.

13. In the above circumstances, we consider that it is a fit case for intervention in the interest of justice. We therefore order that the truck may be immediately released subject to the appellant Shri Jespal Singh giving a Bank guarantee to the satisfaction of the Additional Collector for Rs. 25,000/- and giving a further surety for Rs. 25,000/- within a month of the date of receipt of this order.

14. Furthermore in view of the above position, with the consent of both the sides we take up the main appeal itself in so far as it relates to the truck in question (Truck No. DIL 5606) and in view of the apparent violation of principles of natural justice remand the matter back to the adjudicating authority with the direction that he should read judicate the case after issuing a show case notice and after hearing the appellant. We further direct that the adjudicating authority may dispose the matter as early as possible preferably within 3 months or so. It is ordered accordingly.

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