Collector of Customs Vs. Continental Construction Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-03-1991

Reported in : (1993)(63)ELT373TriDel

Appellant : Collector of Customs

Respondent : Continental Construction Ltd.

Judgement :

1. The Department has come in appeal against the impugned order passed by the Collector of Customs (Appeals), Bombay. The lower authority has remanded the matter vide the impugned order to the original authority on the ground that the case was decided by the said original authority without issuing a show cause notice to the respondents herein.

2. The learned DR, Shri Prabhat Kumar for the appellant - Collector, urges that the impugned order is not correct inasmuch a detailed query memo was given by the Department to the respondents herein. That query memo itself serves the purpose of the show cause notice and a hearing was also accorded to the respondents. On this basis, he submits that there was no need for a formal show cause notice. He also urges that the requirement of a show cause notice as laid down in the Customs Act is only for the purpose of confiscation of goods or imposition of penalty on a person. The Act nowhere lays down that a show cause notice should also be issued where merely an assessment of goods has to be made. He, therefore submits that the appeal be allowed inasmuch as the original authority has gone in details about the question of assessment.

3. Opposing the contentions of the learned DR for the Revenue, Shri B.B. Gujral, learned Advocate for the respondents states that a query memo cannot be converted into a show cause notice. He submits that this is well-settled position that an assessment proceeding is also a quasi-judicial proceeding and the sine qua non of a quasi-judicial proceeding is that the notice must be issued to the person against whom the allegations are made setting out the allegations and giving him a fair opportunity of meeting those allegations by way of a written reply as well as personal hearing. He relies on Tribunal's Order in the case of Continental Construction Ltd. (respondents herein themselves) v.Collector of Customs, Bombay, reported in 1989 (44) E.L.T. 88. In the aforesaid submission the learned Advocate submits that the appeal deserves to be dismissed.

4. We have carefully considered the pleas advanced on both sides. We are of the view that query memos are quite frequently issued by the Department in their day-to-day work to the importers and their clearing agents. After receipt of explanation, if any, of the importers, if the Department is still not satisfied, the detailed show cause notices are issued by the Department. We fail to understand as to why the same procedure has not been followed in this case. We are, therefore, of the view that the impugned order is correct in law and on facts.

Accordingly we dismiss the appeal.

5. We also direct the Assistant Collector to whom the proceedings were remanded by the lower appellate authority in the impugned order, that the matter should be decided within three months of receipt of this order since the imports were made in January 1989 and the respondents' learned Advocate has stated that they are incurring huge demurrage in the Port Trust.