Dharan Prints Vs. Collector of Central Excise and

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-06-1994

Reported in : (1994)(45)ECC74

Appellant : Dharan Prints

Respondent : Collector of Central Excise and

Judgement :
1. This appeal is directed against the Order in Appeal No.PCJ/79/SRT/93 dt. 12-10-1993 confirming the Order-in-original No.SRT-III/ADJ-8/93/OA dated 15-2-1993 directing confiscation of the goods as was conditionally ordered in the adjudication proceedings that were initiated against the appellant. In the proceedings initiated earlier, there was an order of confiscation of the goods but an option to redeem the same was however, granted. The appellants however, were granted one month's time for exercising option to redeem the same. The said order was passed on 30-6-1992. The appellant however, did not exercise the option within this time specified and hence the Supdt. of C.E. wrote a letter dt. 19-10-1992 which was received by the appellants on 7-11-1993 asking them to pay the fine in lieu of confiscation immediately and the appellants paid the redemption fine on 13-11-1992. Thereafter however, the Asst. Collector passed an order to the effect that the appellants having failed to exercise the option within the specified time limit, the goods stood confiscated absolutely to the Government. He therefore, refused to release the goods. In the appeal before the Collector (Appeals), the same ground was upheld.2. Shri Willingdon Christian, the learned advocate appearing

for the appellants, has submitted that Section 34 of the Central Excises & Salt Act does not specify fixing of any time limit and in any case after the fixation of the time limit, a letter was received from the Supdt. for paying up the redemption fine immediately and in pursuance thereto, the appellant has within a span of 5 days only, deposited the redemption fine. He has pleaded that under the circumstances the order for confiscation of the goods is not called for. He has relied upon the decision of the Allahabad High Court in Sri Mangal Das v. Collector of C. Ex. reported in 1989 (43) E.L.T. 636 (All.). In his submission made, identical situation existed there and the communication was received from the Inspector calling upon the party to pay within specified time, whereas here the communication is from the Supdt. and without specifying the date within which the payment ought to be made and the payment has been made within a span of 5 days from the date of receipt of the communication. In his submission, following the ratio of the said decision, the appeal ought to be allowed.

3. Shri Singh, the learned JDR, appearing for the dept., however, submitted that on the expiry of the initial period granted under the Order-in-original, the goods have to be deemed to have stood confiscated to the State and that the letter written by the Supdt.

would have no effect whatsoever in relation to the extension of the time. Extension can be granted only by the adjudicating authority and that the order passed by the authority below need not be interfered with.

4. Considering the submissions made and going through the record, there is no dispute as to the factual position and another important aspect is that the impunged order is passed only after the appellants deposited the amount of redemption fine. No order shutting of their option, was passed after the expiry of the period specified. On the contrary, thereafter, an intimation was sent by the Superintendent requiring the appellants to deposit the same. An inference that therefore, can be drawn is that till the department had intended not to adhere to the time limit fixed earlier and were inclined to consider release of the confiscated goods if the redemption fine was paid. The notice from the Superintendent is issued after the period specified in the order-in-original had expired.

5. Though it is not possible to endorse to the submissions of the ld.advocate, that Section 34 of the Act does not provide for fixing any time limit and as such the subject order to that extent was beyond the statutory power invested in the adjudicating authority, as the power to fix time limit for payment of redemption fine has to be recognised as the ancillary and incidental power, an aspect cannot be overlooked that Section 34 of the Act imposes a statutory obligation on the Adjudicating authority to make an offer for payment of fine in lieu of confiscation and it is not open to him to order outright confiscation.

The statutory provisions do not prescribe any time limit to be fixed, and when such powers to fix time limit are recognised as ancillary, the same are meant to be exercised rationally and carry with them an additional discretion to grant extension thereunder, and such discretion has always to be exercised judiciously and in conformity with the statutory intention, as mar evident from the wordings of the statutory provisions. The wordings of Section 34 of the Act, clearly indicate the legislative intention.

6. Here the adjudicating authority has not clarified as to why he did not feel it proper to post facto extend the time for payment of redemption fine. Non-exercise of discretion, without any justifiable cause therefor, does call for an interference from the Appellate Authority, particularly when non-exercise, is not in confirmity with the legislative intention.

7. Even otherwise, here, after the expiry of the time limit initially fixed, the appellants were served with a notice from the jurisdicational Superintendent, to make the payment forthwith, and pursuance thereto, the payment is made within a period of around five days thereafter. Applying the ratio of the judgment of the Allahabad High Court in Re: Mangaldas (supra), the period is deemed to have been extended.

8. In the result, the order passed by the authority below cannot be sustained and has to be set aside. The appellants have paid the redemption fine and opted to exercise the option. The goods therefore, stand reinvested to the appellants. The dept. shall release the goods to the appellant within a period of two months from the date of communication of this order.