

Commissioner of Customs Vs. Filco Trade Centre (P) Ltd. and anr.

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Court : Gujarat

Decided On : Aug-06-2008

Reported in : 2009(239)ELT19(Guj)

Judge : D.A. Mehta and; H.N. Devani, JJ.

Acts : [Customs Act, 1962](#) - Sections 11, 108, 111, 112 and 123

Appeal No. : Tax Appeal No. 1427 of 2006

Appellant : Commissioner of Customs

Respondent : Filco Trade Centre (P) Ltd. and anr.

Advocate for Def. : None for Opponents 1 - 2

Advocate for Pet/Ap. : R.M. Chhaya, Adv. for Appellant 1

Disposition : Appeal dismissed

Judgement :

D.A. Mehta, J.

1. The following three questions were proposed by the appellant revenue when the appeal was originally filed.

[a] Whether, in the facts and circumstances of the case, the learned Tribunal has committed substantial error of law in placing much reliance on the decision in the case of Shri Shantilal Shah and Ors. v. CC, Bangalore 2005 (69) RLT-442 CESTAT-Bangalore and in the case of Marshil Exports v. C.C. (Appeals), Airport, Mumbai 2005 (70) RLT-90 (CESTAT-Mumbai), and ignoring the evidentiary value of the statements of the respondents recorded under Section 108 of the [Customs Act, 1962](#), by the Customs Preventive Officers and also ignored the decision in case of Shri Nazir-us-Rahaman v. CC, Mumbai reported in , where Hon'ble Tribunal has relied upon the Hon'ble Supreme Court Judgement in the case of Shri D. Bhoormal : 1975 CriLJ545 and the said case has been considered and relied upon by the Commissioner (Appeals), Ahmedabad in Order-in-Appeal No. 46 and 47 - AHD/Cus/Commr(A)/AHD dated 29.04.2005?

[b] Whether, in the facts and circumstances of the case, the learned Tribunal has committed serious error of law by relieving the respondents Shri Deepak Mafatlal Shah & Filco Traders from their statutory obligation under Section 123 of the [Customs Act, 1962](#), in the matter of discharging burden of proof that ball bearings of foreign origin valued at Rs. 4,08,425/- seized by the Customs officers under Panchnama dated 25.05.95 are not smuggled goods?

[c] Whether, in the facts and circumstances of the case, the learned Tribunal has materially erred by exonerating the noticees from their liability to penalty imposed upon them under Section 112[a] and 112[b] of the [Customs Act, 1962](#)?

2. Subsequently, the appellant has proposed the following two re-framed questions:

[a] Whether the onus of proof is upon the appellant (revenue) even though there is an admission on part of the respondents that the goods of foreign origin were purchased without any documents?

[b] Whether, in the facts and circumstances of the case, the learned Tribunal has committed error of law by relieving the respondents from their statutory obligation under Section 123 of the [Customs Act, 1962](#), in the matter of discharging burden of proof that the goods of foreign origin seized by the appellant are not smuggled

goods?

3. The relevant facts are that the premises of respondent assessee were searched on 25.5.2005 in presence of the Director, resulting in recovery of different varieties of ball bearings of foreign make, valued at a sum of Rs. 4,08,425/-. Seizure was effected as, according to the revenue, the said goods were not imported under valid import documents. On the basis of applicability of Section 11 of the [Customs Act, 1962](#) (the Act), by reading a prohibition, confiscation of seized goods was ordered under Section 111(d) of the Act. The redemption fine was fixed at Rs. 75,000/- and penalties under Section 112(a)(b) of the Act were also levied. Ultimately, when the matter reached the Tribunal, it was found by the Tribunal that the goods purchased from market for valuable consideration had to be considered as duty paid unless proved otherwise. The order of confiscation, levy of redemption fine and levy of penalties was set aside. Being aggrieved, revenue has preferred the present Tax Appeal.

4. Heard the learned Counsel for the appellant. It was submitted that, as per Exim Policy, the goods in question may not be prohibited items, but were restricted items appearing in the Negative list of imports and hence, because of such import of goods which is contrary to any other law for time being in force, as provided by Section 111(d) of the Act, the impugned order was erroneous and the appeal merited admission. That the burden of proof which was on respondent - assessee had not been discharged.

5. There can be no dispute to the proposition that goods, import of which is prohibited, either by the provisions of the Act or any other law in force, can be confiscated and consequential actions initiated under the provisions of the Act. However, in the present case, as noted by the Tribunal, there was no restriction on the goods in question and hence, it could not be stated that respondent assessee had committed any act of illegal import of prohibited goods.

6. The extract from Indian Manual for Export Import Policy and Procedures, 1992-97 relating to Negative list of imports provides for Prohibited Items in Part I and in Part II, which deals with Restricted Items, the description of items under Heading A-Consumer Goods reads as under:

All consumer goods, howsoever described, of industrial, agricultural, mineral or animal origin, whether in SKD/CKD condition or ready to assembly sets or in finished form.

For the removal of doubts, it is hereby declared that consumer goods shall also include the following:

[1] Consumer electronic goods, equipment and systems, howsoever, described.

[2] Consumer telecommunication equipment.

[3] Watches in SKD/CKD or assembled condition as well as movements (mechanical); watch cases; watch dials.

[4] Cotton, woollen, silk, man-made and blended fabrics including cotton terry towel fabrics.

[5] Concentrates of alcoholic beverages.

[6] Wines (tonic or medicated).

[7] Saffron.

[8] Cloves, Cinnamon and Cassia.

[9] Sports goods/equipment.

[10] Cameras.

7. On a plain reading of the aforesaid description, it becomes clear that the items which are restricted for the purposes of import are all consumer goods of either industrial origin, or of agricultural origin etc., where the goods are in Semi Knocked Down condition or Completely Knocked Down condition, or ready to assemble or in finished form, but the requirement is, in the first instance, that the goods should be consumer goods. Ball bearings can, in no circumstances, be termed to be consumer goods. There might be customers for ball bearings, but the requirement is not of the goods being available to a customer, but the goods being available to a consumer for the purposes of consumption by the person concerned.

Consumption being in the nature of personal use. This aspect becomes clear from the later part of the very same description which is an inclusive one, when it talks of consumer electronic goods, consumer telecommunication equipments, watches, fabrics of different kinds like cotton, woollen, silk etc. and other items which need not be enumerated. Ball bearings cannot be included by any stretch of imagination under this heading. In these circumstances, a negative burden cannot be cast on respondent - assessee that even if ball bearings are neither prohibited goods nor restricted goods, the respondent - assessee should show that import is permissible.

8. In the aforesaid factual matrix, it cannot be stated that the impugned order of tribunal gives rise to any legal infirmity so as to warrant interference. The appeal is, accordingly, dismissed in absence of any question of law, as proposed or otherwise, much less a substantial question of law.

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