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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-19-1994

Reported in : (1994)(74)ELT588TriDel

Appellant : Collector of C. and C.E.

Respondent : Essma Woollen Mills (P) Ltd.

Judgement :
1. This is an appeal by Revenue against order-in-appeal No.296-CE/CHD/91, dated 27-2-1991. The facts of the case are in a seizure case the Superintendent (Tech) vide order-in-original No. 86/CE/83, dated 7-11-1983 allowed the respondents to redeem the goods on payment of Rs. 5000/- as redemption fine and penalty of Rs. 3000/-, in addition to duty leviable on goods thereon. The order stipulated that option to redeem the goods was to be exercised within a period of three months from the date of order in original dated 7-11-1983. The confiscated goods however, were sold through auction on 22-8-1984 on the ground that the option to redeem the goods was not exercised within period of three months. The sale proceeds of the goods amounting to Rs. 11,000/- were retained by the Department. The respondents, however, filed the appeal against the order-in-original dated 7-11-1983 and Collector (Appeals) vide his order-in-appeal No. 88/CE/CHD/86, dated 15-5-1986 reduced redemption fine and penalty to Rs. 1,000/- and Rs. 500/- respectively. The respondents, therefore, vide letter dated 29-1-1987 requested for release of goods showing their willingness to deposit the Redemption Fine as reduced in order-in-appeal dated 15-5-1986 by the Collector

(Appeals), New Delhi. This request was rejected by the Superintendent (Tech.) vide his order-in-original dated 24-11-1987 on the ground that the respondents had not requested for release of goods within three months. The Collector (Appeals), Chandigarh vide his impugned order dated 27-2-1991 held that respondents are justified in their claim for release of sale proceeds and held that sale proceeds should be released to the appellants after deduction.

2. Ld. JDR Shri B.D. Bhagat on behalf of the appellant submitted that in this case no option to redeem the goods on payment of fine or penalty was exercised within three months as indicated in order-in-original and therefore, the Department was justified in selling the goods. Since option has been categorically indicated, it had not been exercised nor any intimation was given regarding the respondents having gone into appeal, the respondents were not entitled to sale proceeds of the goods retained by the Revenue.

3. Shri Lachman Dev, Ld. Consultant, on behalf of the respondent submitted that Revenue was not bound to dispose away the goods as goods were not such as could deteriorate. Once the Collector (Appeals) in his order-in-appeal dated 15-5-1986 disposed of the order-in-original by reducing the final payment to Rs. 1000/-- and Rs. 500/-, the Department is bound to implement this order-in-appeal by at least release of the sale proceeds of goods after deduction of final payment as adjudged. In fact, it is correctly held by the Collector (Appeals) in his order dated 27-2-1991 that Department was bound by order of Collector (Appeals) since the order has not been upset.

4. I have considered the submissions made by both the sides and gone through the circumstances of the case. Merely because respondent did not exercise the option to redeem the goods within the stipulated period in order-in-original would not mean that they have abandoned their claim on goods particularly when it has come out that they had, in the meantime, filed the appeal to Collector (Appeals) against this order. In appeal memo the Revenue have submitted that appeal filed by the respondents should have been rejected in view of the fact that it was incumbent upon the respondent to intimate the department that it had gone in appeal and the option to redeem the goods was not being exercised till the

disposal of the appeal. Merely because the respondents did not intimate the fact of going into appeal in regard to the goods confiscated would not have the effect of vesting these goods in the Govt., particularly when, the order of the Asstt. Collector was subject matter of the appeal. It is held by the Tribunal in the case of Collector (Customs) Madras v. Shri T.D. Adiyapaiham - 1988 (33) E.L.T.514 that if the confiscated goods have been disposed of during pendency of the appeal, the Department is liable for payment of sale proceeds after deducting the amount of redemption fine. I do not find any merit in the contentions that sale proceeds of the goods should be vested with the Government. In fact the respondent had a right to receive the goods after paying the redemption fine and penalty as adjudged by the Collector (Appeals). Having been deprived of that right, they could not be subjected to further burden by way of deprivation even of sale proceeds of these goods. Once they pay redemption fine and penalty as adjudged in appeal, they are justified in claiming the sale proceeds of the goods sold through auction.

5. In view of discussions made, I reject the appeal of the revenue and uphold the order dated 27-2-1991 of Collector (Appeals).

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