Collector of Customs Vs. SaThe Biscuits and Chocolates

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-19-1994

Reported in : (1995)LC571Tri(Mum.)bai

Appellant : Collector of Customs

Respondent : SaThe Biscuits and Chocolates

Judgement :
1. This appeal under Section 129D of the Customs Act, 1962 by the Collector of Customs, Bombay is against the order of Member (Legal & Judicial), Central Board of Excise and Customs, New Delhi (No. 5-R, dated 13-1-1988).

2. The facts of this case are that M/s. Sathe Biscuits and Chocolates Company Ltd., Pune had imported a consignment stated to be Mild Steel defective sheets valued at Rs. 1,35,103/- and sought clearance free of duty against an advance licence. On examination and test of the goods, it was found that the consignment contain 25 MTs of Tin Free Sheets having a layer of chromium and 10 & 15 MTs of G.P. Sheets. Since neither of these was covered by the advance licence, the Collector of Customs, after adjudication proceeded to confiscate the goods and permitted to redeem them on payment of duty applicable and redemption fine of Rs. 35,000/-. The appeal proposes enhancement of fine by 100% on the ground that the MOP is to this extent and that it will seek penalty on the respondent for the importation.

3. Shri S.N. Kantawala, advocate for the respondents, argued that it was not denied that the goods had been used in the manufacture of cans for packing the goods, which the respondent exported. Wrong goods had been erroneously supplied. Taking all these facts into account, Collector had imposed a low fine. Further, the department had not produced any evidence to show that the MOP is of 100%.

4. The Department's appeal proceeds on the presumption that the importation of wrong goods was deliberate, since S.S. Sheets and G.P.Sheets are costlier than M.S. Sheets. This may be so, but it cannot be denied that sometimes error do take place in shipment and there is no evidence to show that the wrong goods were deliberately shipped. The fact that the goods were confiscated does not necessarily mean that the offence was deliberate. The provisions of Section lll(d) of the Customs Act, 1962 do not postulate the existence of mens rea before the confiscation resorted.

5. The Collector had considered the quantum of redemption fine taking into account the fact that the goods were utilised for export. This basis has not been questioned. I also find that there is no evidence regarding the argument MOP which was available. Since Collector has exercised his discretion judiciously and having regard to the fact that the goods are used for export, it cannot be said that the fine imposed is too low and in the circumstances, I decline to interfere with this order and reject the appeal.