

Commissioner of Customs Vs. Hi Lingos Co. Ltd. and anr.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-15-1995

Reported in : (1996)(63)LC617Tri(Mum.)bai

Judge : J T R., P Desai

Appellant : Commissioner of Customs

Respondent : Hi Lingos Co. Ltd. and anr.

Judgement :

1. Both the Reference Applications have been brought by the Revenue against this Bench Order No. 1695/93-WRB dt. 20.9.1993 and No.1953/93-WRB dated 14.10.1993. In both the cases, the Respondents (appellants in the original appeal) were foreign suppliers of certain goods. On appreciation of various evidences, both of us came to the conclusion that the suppliers cannot claim bona fide in the shipment and hence the ratio of the Supreme Court in Sampatraj Duggar 1992 (52) ELT 163 (SC) cannot be applied. Hence order of confiscation was confirmed, but reduced the redemption fine for reshipment. One of the Respondents M/s Hi Lingos Co. Ltd. went before the Supreme Court challenging the aforesaid order and hence both the Reference Applications were kept pending, in view of the fact that the matter was before the Supreme Court. Now when the Reference Applications are listed for hearing, during the hearing, Shri V.S. Nankani, the Id.Advocate for the applicants, indicated that the Supreme Court have dismissed the SLP filed by M/s Hi Lingos Co. Ltd. rendering finality to the order passed in that case. The case of the other Respondents is also on the same issue and in

both the case, considering the evidences we have held the same view.

3. The department have come up with Reference Applications in both the cases urging certain questions to be referred to the High Court for consideration. On a perusal of the questions and after hearing Shri V.K. Puri, the Id. SDR and Shri H. R. Krishnamurthy, the Id. JDR, we find that these questions relate to the penalties imposed on the Respondents by the Collector. Both of us have concurred that penalties are not warranted in these cases but for different reasons recorded in our order. There was a difference of opinion between us as to whether for an act of omission and commission done by a foreign national in the foreign soil in respect of some goods, which have been imported into India attracting penal provisions under the Customs Act, a penalty could be imposed. While Member (Technical) took the view that the penalty could be imposed, Member (Judicial) took the opposite view. All the same, both of us agreed for different reasons that penalty cannot be imposed. Shri H.R. Krishnamurthy, the Id. JDR produced a copy of the Law Ministry's advice to plead that a penalty can be imposed on a foreigner. We looked into the advice. As seen from the opinion given by the Law Ministry, the question posed before them was whether a penalty can be imposed on a foreigner and the Law Ministry has given an opinion that it can be imposed under the Customs Act. We have no dispute on this. The question to be considered is whether in respect of goods shipped, certain acts committed on a foreign soil by a foreign supplier resulting in the goods imported into India, attracting penal provisions under the Customs Act, a penalty can be imposed on such foreign supplier. This issue does not find discussion in the Law Ministry's advice. Be that as it may, we agree that the question whether a penalty on the foreign supplier in such circumstances could be imposed is a point of law and we are also eager to get an authoritative opinion from the High Court. However, in the present cases before us, both of us have concurred that penalties need not be imposed for different reasons. No reference has been made on the findings of Member (Technical) setting out the reasons as to why a penalty is not warranted and those findings are based purely on appreciation of facts. When these factual findings are not challenged, they are to be operative. Hence, even if the Reference Application is allowed by the High Court in favour of Revenue, so long as the findings on factual appreciation discussed by Member (Technical) are not disturbed, penalties

cannot be imposed. Hence the Reference becomes purely academic. No Reference can be made on getting clarification on an issue of academic interest. Hence we dismiss both the Reference Applications.

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