Collector of Central Excise Vs. Anup Kumar Aggarwal

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-16-1996

Reported in : (1997)(91)ELT63TriDel

Appellant : Collector of Central Excise

Respondent : Anup Kumar Aggarwal

Judgement :

1. Being aggrieved by the order of Collector (Appeals), the Commissioner, Central Excise has filed this appeal on the ground that the goods in question must have been accompanied properly by bill of lading, duty-paying document, bill and voucher, line number, import bill etc.; that the respondent herein in his statement had admitted that the goods are of foreign origin; that the respondent could not furnish the name and address of the trader who supplied him the goods; that in view of the above the order passed by the Collector (Appeals) was not legal.

2. The facts of the case, in brief, are that the officers of Central Excise, Allahabad searched the business premises of the respondent herein which resulted in the recovery of 274 pieces of olive oil cans alleged to be of foreign origin. The respondent herein in his written statement stated that the oilve oil in the instant case was of foreign origin. Accordingly, a show-cause notice was issued to the respondent herein to explain as to why the seized goods should not be confiscated and why penalty should not be imposed.

2. Shri Haja Mohiudden, the learned DR submits that the respondent herein admitted in the statement that the goods were of foreign origin; that the respondent could not produce any bill of entry showing that the goods were legally imported and duty was paid on the goods. He reiterates the findings of the lower authorities.

3. Shri S.N. Seth, the learned Consultant appearing for the respondent herein submitted that the goods are not notified under Section 123 of the Customs Act, 1962, therefore, the onus was on the Department to prove that the goods were of smuggled nature and illegally imported into India; that there is nothing on record to show that the Department has discharged this onus. The learned Consultant submitted that there is nothing on record to prove that the goods were of foreign origin; that the Department has placed reliance stated that the goods were of foreign origin. The learned Consultant submitted that this statement was of the accused and needed to be corroborated by independent evidence for which the Department has miserably failed. He submitted that the goods are under OGL and are not a restricted item but are freely available in the market. The learned Consultant also referred to the cross-objection filed by him. Summing up his arguments, the learned Consultant submitted that confiscation of the goods was not warranted and was therefore, illegal and therefore, the lower authorities rightly held that the goods were not confiscable. He prayed that the impugned order may be upheld.4. Heard the submissions of both sides. On careful consideration of the fact that the goods are not notified under Section 123 of the Customs Act, 1962; that the Department has not discharged its onus that the goods were smuggled into India; that the goods are under OGL and are available in the market readily, I hold that the confiscation of the goods was not warranted. In this view of the matter, I do not see any reason to interfere with the impugned order. I thereore, uphold the impugned order and the appeal is rejected.