

(2005) 09 KL CK 0033
In the High Court Of Kerala
Case No : C.E.Ex. Appeal No. 25 of 2004

Afzal Agency

APPELLANT

Vs

Customs, Excise and Service Tax Appellate Tribunal

RESPONDENT

Date of Decision : 08-09-2005

Acts Referred:

Customs Act, 1962 — Section 111, 112, 125, 126
Prevention of Food Adulteration Act, 1954 — Section 6

Citation : (2006) 1 ILR (Ker) 26 : (2005) 4 KLT 821

Hon'ble Judges : K.T. Sankaran, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : G. Subramanian and Saji Varghese Kakkattumattathil, for the Appellant; John Varghese, Asst. Solicitor General, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—The question posed for consideration in this case is whether adjudicatory authority under the Customs Act could impose redemption fine in terms of Section 125 of the Customs Act for export when liability to confiscation u/s 111 is established.

2. Applicant had imported consignment of 53.97 metric tones of Iran origin dates valued at Rs. 3,38,668 bill of entry No. 115570 dated 12-6-2002. On analysis by the Port Health Officers the goods were found to be not in conformity with the general standards and hence violated the provisions of the Prevention of Food Adulteration Act, 1954. The dates were infected with insects. Original authority had therefore confiscated the goods u/s 111(d) of the Customs Act read with Section 6 of the Prevention of Food Adulteration Act since goods were prohibited for import u/s 111 of the Customs Act. Consignment therefore could not be cleared. According to the applicant, suppliers of cargo M/s. A1 Dahamosha Trading, Ajman U.A.E. had agreed to take back the goods. Request was made to the Customs Authorities at Cochin to re export the goods in terms of the instructions contained in M.F.D.R. Circular No. 36/2004 dated 15-6-2001. Joint

Commissioner of Customs however confiscated the goods u/s 111(d) of the Customs Act and imposed redemption fine of Rs. 30,000/- subject to the condition that the goods are allowed only for re-export to the original suppliers. No penalty was however imposed. Fine amount was paid and goods were re-exported.

3. Applicant aggrieved by the order of the original authority preferred appeal before the Commissioner (Appeals) who however set aside the order by its order dated 27-11-2003 after taking the view that redemption fine is normally imposed only for goods which are sought to be released for clearance to the domestic market and when the goods are re-exported, the imposition of redemption fine would not arise. Commissioner of Customs however took up the matter in appeal before CEGAT. Appeal was allowed holding that since there was clear violation of law and the imported goods had not satisfied the food standards the same was liable for confiscation and consequently the original authority had rightly imposed 10% of redemption fine. Aggrieved by the same, this appeal has been preferred.

4. Counsel appearing for the applicant submitted that redemption fine is normally imposed only for goods which are sought to be released for clearance to domestic market and when the goods are re-exported the question of redemption fine does not arise. Counsel also submitted that the importer had no role in having imported insect affected inferior goods and that when returned to the supplier they had expressed willingness to take back the goods. In any view, counsel submitted that there is no wilful complicity on the part of the importer.

5. Sri. John Varghese, Assistant Solicitor General, appearing for the Department, on the other hand, contended that the Tribunal is justified in imposing redemption fine and it was also pointed out that non imposition of penalty was to the advantage of the applicant.

6. The sole question as we have already indicated, comes up for consideration in this case is whether the adjudicatory authority was justified in imposing redemption fine in terms of Section 125 of the Customs Act, relevant portion of Section 125 is extracted below.

"Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods, or where such owner is not known, the person from whose possession goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit."

7. Section 125 also stipulates that the fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable in respect of the goods. Section 126 of the Customs Act states that when any goods are confiscated under the Act, such goods shall thereupon vest in the Central Government. When goods are found to be offending goods and order of

confiscation is passed, then the goods shall vest in the Central Government and if they are to be restored to the owner, adjudicating authority can do so only under the provisions of Section 125 which prescribes imposition of fine in lieu of confiscation. Fine envisaged thereunder is only to get over the order of confiscation irrespective of whether goods are cleared for home consumption or re-exported only after redeeming it after paying redemption fine in lieu of confiscation. Contention was raised by the counsel for the applicant that the applicant had no intention to violate any of the provisions of the Prevention of Food Adulteration Act and therefore goods should not have been confiscated and redemption fine should not have been imposed.

8. We find it difficult to accept this contention. Apex Court in *Union of India and Another Vs. M/s. Mustafa and Najibai Trading Co. and Others*, held that mens rea is not essential for invoking the power of confiscation u/s 111 of the Customs Act. Section 111 empowers the Customs Authorities to confiscate imported goods if any of the provisions contained in the sub clauses is satisfied. Section 112 authorities imposition of penalty for improper importation of goods. Section 125 says that the authority shall grant option to owner or the person from whose possession goods have been seized to pay fine in lieu of confiscation. Once the goods are confiscated unless the importer redeems the goods by paying redemption fine he is not reacquiring the ownership of the goods. Permission granted to re-export on the "basis of the request made by the owner of the goods is outside the purview of the adjudication proceedings. Redemption fine envisaged is only to get over the order of confiscation irrespective of whether the goods are cleared for home consumption or for re-export. By re-exporting the goods the importer can avoid the payment of duty but not the fine in lieu of confiscation. Above being the legal position, we find no infirmity in the order of the Tribunal to be interfered by us. We therefore answer the question in favour of the Department and dismiss the appeal.