(2015) 07 SC CK 0025

In the Supreme Court Of India

Case No : Civil Appeal No. 6623 of 2005

Commissioner Of Customs, Amritsar — APPELLANT

Vs

Ess Kay International — RESPONDENT

Date of Decision : 16-07-2015

Acts Referred:
Constitution of India, 1950 — Article 133

Citation : (2016) 342 ELT 3

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : S/Shri K. Radhakrishna, Senior Advocate, Ms. Binu Tamta, Ms. Nisha Bagchi, Ms. Pooja Sharma and B. Krishna Prasad, Advocates, for the Appellant; Shri Nikhil Jain, Advocate, for the Respondent

Final Decision : Disposed Of

Judgement

1. Show cause notice dated 25-11-1999 was issued to the respondent herein on the ground that while export of "knitted woollen shawls (Dyed)" as an obligation under the Advance Licence No. P/L/0021136, dated 8-5-1997, the respondent filed Shipping Bill No. 4319, dated 22-5-1999 wherein there was a mis-declaration in respect of the quantity as well as description of the goods. The consignment was seized and taken into possession by the customs staff and action was taken against the respondent when it was found that there was a mis-declaration of goods. Since under the aforesaid Advance Licence, the respondent was also under the legal obligation to export knitted woollen shawls (Dyed) manufactured out of 5,000 kg. woollen yarn which was imported duty free, the appellant demanded excise duty.

2. In the appeal against the said order, the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for short "CESTAT") confirmed the findings of the Adjudicating Authority in so far as they pertained to the mis-declaration in respect of quantity as well as description of the goods in the Shipping Bill No. 4319, dated 22-5-1999. However, at the same time, the CESTAT also found that

the export obligation was complemented by the respondent when another export consignment on 31-5-1999 which was cleared on 17-7-1999 vide Shipping Bill No. 00325/99, dated 31-5-1999 at ICD, Chherata, Amritsar and, therefore, no duty could be demanded on the ground that the respondent had committed breach in the discharge of export obligation.

3. In so far as mis-declaration in respect of quantity as well as description of the goods in Shipping Bill No. 4139, dated 22-5-1999 is concerned, after confirming the findings to that effect, the CESTAT reduced the redemption fine to Rs. 3,00,000/- lakhs and personal penalty of Rs. 2,00,000/-.

4. We are not inclined to interfere with the discretionary power exercised by the CESTAT in the given facts and circumstances of the case.

5. The appeal is accordingly dismissed.

