(2009) 08 AHC CK 0228

In the Allahabad High Court

Case No : Writ Petition No. 2691 (M/S) of 2000

Commissioner of Customs APPELLANT

Vs

Anisur Rahman RESPONDENT

Date of Decision : 21-08-2009

Acts Referred:
Evidence Act, 1872 — Section 45

Citation : (2010) 257 ELT 388

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Satish Chandra, J.—This writ petition is filed by the Commissioner, Customs, Lucknow against the order dated 8-12-1999 passed by the Customs Excise & Gold (Control) Appellate Tribunal, New Delhi.

2. In the absence of opposite parties, I have heard Sri Syed Husain, Additional Government Advocate for the petitioner.

3. The brief facts of the case are that the Directorate of Revenue Intelligence of the Central Government checked the Truck No. UP 65- H, 1794 at Naubatpur, Varanasi. From the Truck, total seven packets containing silk yarn were found. The intelligence department called two experts who identified that three packets were of the Indian origin. However, both the experts opined that the remaining four bundles were Chinese origin. So, four bundles were seized and confiscated. Being aggrieved, the opposite party has filed an appeal before the First Appellate authority i.e. Collector (Appeals) who has accepted the plea of the assessee by observing that the silk yarn in question were of the Indian origin.

4. Not being satisfied, the department has filed the second appeal before the Tribunal who sustained the decision of the first appellate authority i.e. Collector (Appeals). The Tribunal observed that the goods in dispute were Indian silk yarn which were consigned to Shri Mukhtar Ahmedin Varanasi and the said silk yarn

had been produced by the local producers of the silk yarn in Malda. The opposite party has also produced the particulars of the purchases made by them from the said producers. The Challan No. 104 was also produced where the details of the purchase of the said goods from the local producers and their value was certified. The Tribunal also opined that two experts'' opinion is not binding as there was no chemical or technical test to know the exact position. Finally, the appeal filed by the department was dismissed. Not being satisfied, the department has filed the present revision.

5. By considering the totality of the facts and circumstances of the case, it appears that the opinion of the experts is relevant u/s 45 of the Evidence Act but that is not a conclusive proof and needs supporting evidence.

6. In the instant case, seven bundles were seized. Out of which, the expert opined that three bundles were of the Indian origin and remaining four bundles were of Chinese origin. To contradict it, the opposite parties has produced the Challan and value of the bundles in question from the producers. It was claimed that the said silk was manufactured in Malda. The particulars of the purchase were made available to the department but the department made no attempt to verify the same. The department has solely relied upon the opinion of the so-called two experts. No other attempt was made to collect the supporting evidence. The short cut method adopted by the department cannot be appreciated in the facts and circumstances of the case.

7. Needless to mention that the Tribunal is final fact finding authority as per the ratio laid down in the case of Kamala Ganapathy Subramaniam and Another Vs. Controller of Estate Duty, and generally no interference is required in such cases.

8. No question of law is emerging from the Tribunal''s order. Hence, no interference is required with the order of the Tribunal. Therefore, the order of the Tribunal is hereby sustained along with the reasons mentioned therein.

9. In the result, writ the petition filed by the petitioner is hereby dismissed.

