(2011) 03 GUJ CK 0156

In the Gujarat High Court

Case No : Tax Appeal No. 1088 of 2010

Commissioner of Customs APPELLANT

Vs

Kiran Sudhir Das RESPONDENT

Date of Decision : 16-03-2011

Acts Referred:
Customs Act, 1962 — Section 111, 112, 125

Citation : (2011) 268 ELT 72

Hon'ble Judges : S.G. Gokani, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Amee Yajnik, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Akil Kureshi, J.—Revenue is in appeal against judgment of the tribunal dated 30-10-2009 raising following questions:

(A) Whether the Hon''ble CESTAT is competent to relax the statutory prohibition imposed by the Government of India regarding import of Indian currency in excess of Rs. 5,000/- per person while entering into India as per Notification No. FEMA 6/RB -2000 dated 3-5-2000 of the Reserve Bank of India?

(B) Whether the Hon''ble CESTAT is empowered to release goods that were confiscated being prohibited goods?

(C) Whether the Hon''ble CESTAT''s order relaxing the prohibition on the prohibited goods was just and proper only on the ground that the goods were declared? In other words, does the gravity of the offence of importing prohibited goods decrease just because the said goods were declared by the importer?

2. Respondent, a non-resident of India who was traveling from India to Dubai with his family was found carrying Indian currency of Rs. 1,15,000/-. Finding that such action was not permissible. Customs Authorities confiscated entire amount u/s 111 of the Customs Act and also imposed penalty u/s 112 of the Act

of Rs. 10,000/-. Respondent carried the issue in appeal before the Tribunal. Tribunal by impugned order reduced the fine in lieu of confiscation of Rs. 10,000/- and penalty of Rs. 1000/- observing that Appellant had declared the currency and that therefore, lenient view should be taken. Tribunal relied on other decisions to suggest that even otherwise absolute confiscation was not warranted.

3. Having perused the orders on record and the statutory provisions with assistance of learned Counsel for the Appellant, we find that though power under Sections 111 and 112 of confiscation and penalty are available, u/s 125 of the Customs Act, Authority also enjoys discretionary power to impose fine in lieu of confiscation. Tribunal in exercise of such discretionary powers ordered reduction in fine and also reduced penalty. Such being exercise of discretionary power, we see no question of law arising. Appeal is therefore, dismissed.

