(2010) 07 CAL CK 0074

In the Calcutta High Court

Case No : CUSTA No. 7 of 2010 and GA No. 1959 of 2010

Commissioner of Customs APPELLANT

Vs

Kishan Kumar Kejriwal RESPONDENT

Date of Decision : 02-07-2010

Acts Referred:
Customs Act, 1962 — Section 11, 111
Wild Life (Protection) Act, 1972 — Section 2(36)

Citation : (2011) 263 ELT 357

Hon'ble Judges : Kanchan Chakraborty, J;Kalyan Jyoti Sengupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The Court : This appeal is sought to be admitted on various grounds as mentioned in paragraph 8 :-

I. Whether the learned Tribunal erred in law in dismissing the appeal filed by the appellants, without considering that as per Licensing notes (2) of Chapter 03 of the Foreign Trade (Import Policy), import of wild animal including their parts and products was prohibited under the law?

II. Whether the learned Tribunal failed to consider the definition of Wild Animal, as defined in Section 2(36) of the Wild Life (Protection) Act, 1972, where the term Wild Animals, means any animal in Schedule I to IV of the said Act and thus the seashells imported by the respondent being products of such animals/ species which were specified in Schedule I and IV of the Wild Life (Protection) Act, 1972 were prohibited and thus liable to confiscation?

III. Whether the learned Tribunal erred in holding that the department was acting on the recommendation of the wild life Authorities, inasmuch as, the learned Tribunal failed to take in consideration Section 111(d) of The Customs Act, 1962 which makes any goods imported contrary to any prohibition imposed by/or under The Customs Act, 1962 or any other law in force, liable to confiscation?

IV. Whether the Learned Tribunal erred in holding that the goods imported that the sea shells were not restricted as per the Import, Export policy which will govern the import and export of good, without considering the provisions of Section 11 and Section 111(d) of the Customs Act, 1962?

V. Whether the learned Tribunal ought to have held that the imported contained sea shells of nautilus pompilicis, a species included in Schedule-I and sea Shells of Trochus Niloticus and Turbo Marmoratus both included under schedule IV of the Wild Life (Protection) Act, 1972, the import of such goods were prohibited as per the Foreign Trade Policy (Import Policy), 2004-2009 Chapter-3 Exim Code 307, Import Licensing Note (2).

2. We have heard Smt. Sarkar in this matter. We have gone through the impugned judgment and order of the Learned Tribunal. We are of the view no question of law not to speak of substantial question of law is involved in this matter. Hence, we are not inclined to deal with this appeal with reasons as follows :-

Learned Tribunal on fact found that the goods in question are classifiable under 0307 of the Customs Tariff regarding which there is no dispute and as per Import Export Policy there is no restriction of import of such goods. The Revenue wants the recommendation for confiscation of the goods made by the competent authority should be enforced. Learned Tribunal in our view has rightly held that recommendation is not the governing factor to decide whether the particular goods are liable to be confiscated or not. When on fact and on provision of the Import Export Policy Learned Tribunal found that there has been no restriction of the import export of the goods, and as per Import Export Policy goods are classified are not restricted or prohibited goods we do not think that there is any scope to admit this appeal under any circumstances.

3. It is pertinent to note that the Commissioner has also taken the same view with regard to the confiscation.

4. We, therefore, dismiss the appeal.

5. There will, however, be no order as to costs.

6. Let certified xerox copy of this order be made available to the parties, if applied for, upon usual of all formalities.