
(2010) 03 KAR CK 0054
In the Karnataka High Court
Case No : C.S.T.A. No. 35 of 2006

Commissioner of Customs

APPELLANT

Vs

Vikaram Jain

RESPONDENT

Date of Decision : 19-03-2010

Acts Referred:

Customs Act, 1962 — Section 112, 114

Citation : (2010) 255 ELT 39

Hon'ble Judges : K.L. Manjunath, J;H.S. Kempanna, J

Bench : Division Bench

Advocate : V.Y. Kumar, for the Appellant; Kiran S. Javali, for the Respondent

Final Decision : Allowed

Judgement

K.L. Manjunath, J.—The legality and correctness of the order passed by the CESTAT on 13-2-2006 in Final Order 624/2006 2006 (205) E.L.T. 735 (Tri.-Bang.) is called in question by the Revenue.

2. On the ground that the assessee has failed to fulfill the export obligation by issuing a show cause notice u/s 112 of the Customs Act, levied penalty by invoking the provisions of Section 114 of the Act, the assessee filed an appeal before the Tribunal. The Tribunal only on the ground that in the show cause notice the Revenue had relied upon Section 112 of the Customs Act and could not levy the penalty relying upon Section 114 of the Act, without considering the case of the Revenue on merits, set aside the order.

3. We have heard the Counsel for the parties.

4. After hearing, we are of the view that even if a wrong provision of law has been quoted by the Revenue in the show cause notice, if the pith and substance of the show cause notice fulfill the provisions of Section 114 of the Customs Act, it was for the Tribunal to consider the case of the parties on merits and to find out whether the Revenue has made out a case u/s 114 of the Act so as to levy penalty. If there is any typographical error in mentioning the correct provision of

law or even otherwise by oversight if a wrong provision of law is mentioned, the same cannot be a ground for the Tribunal to set aside the order without examining the case of the parties on merits. Therefore, we are of the view, only on this short ground without answering the question of law, we have to set aside the order of the Tribunal and the matter requires to be reconsidered by the Tribunal afresh on merits, in accordance with law.

5. Accordingly, the matter is remanded to the Tribunal. Appeal is allowed.