(2009) 04 P&H CK 0136

In the Punjab And Haryana At Chandigarh

Commissioner of Customs (Preventive) Amritsar — APPELLANT

Vs

Pulso Copiers — RESPONDENT

Date of Decision : 20-04-2009

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

Citation : (2009) 04 P&H CK 0136

Hon'ble Judges : M.M. Kumar, J;Augustine George Masih, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This order shall dispose of three appeals being CUSAP Nos. 3,5 and 6 of 2009 as the issue raised in all these appeals is common. For the purposes of this order, facts are being taken from CUSAP No. 3 of 2009.

2. The dealer-respondent imported old and used incomplete unserviceable photocopying machine incorporating Optical systems- Low duty and their parts GP Toner, Paper Deck Set, Drum units. The Assessing Authority as well as the Appellate Authority recorded a categorical finding that although some parts were missing still the imported goods had the essential character of a photocopier machine and the same were reflected in para 2.17 of the Foreign Trade Policy (2004-09) (for brevity ''the Policy''). It was found that the dealer -respondent had imported said goods in violation of the provisions of para 2.17 of Chapter 2 Volume I of the policy as the aforesaid goods require license/ specific permission from the licensing authority. Accordingly u/s 111(d) of the Customs Act, 1962, the Adjudicating Authority ordered confiscation and also afforded an option exercising power u/s 125 of the Act to the dealer- respondent to redeem the goods on payment of fine of Rs. 2,55,000/- and a personal penalty of Rs. 1,50,000/- was also imposed. On appeal, the Commissioner recorded the finding that the dealer- respondent had imported the goods for the first time and did not mis-declare the description of the goods. Further a finding was recorded that there was no evidence highlighting the presence of intention to withhold the

payment of duty. Accordingly redemption fine was reduced to Rs. 1,75,000/- and the personal penalty was also slashed to Rs. 15,000/- The exercise of discretion by the Commissioner (A) was challenged before the Customs Excise and Service Tax Appellate Tribunal, New Delhi (for brevity ''the Tribunal''). The Tribunal upheld the order dated 29.12.2006 passed by the Commissioner (A) and opined that the discretion exercised by the Commissioner (A) could not be regarded to be perverse.

3. Having heard learned Counsel we are of the considered view that once the Commissioner(A) has exercised the discretion by keeping in view the facts and circumstances of the case we find no reason to set aside that order especially when it has been upheld by the Tribunal. Moreover, a perusal of the order passed by the Commissioner (A) shows that there could have been bona fide mistake on the part of the dealer- respondent in as much as second hand photo copying machines were not complete and some of the parts although minor one were missing without which the machine could not have worked. Therefore, the exercise of discretion is not without any rationale basis and has been rightly upheld by the Tribunal. The appeals are wholly without merit as no question of law much less a substantive question of law has been raised in these appeals warranting their admission.

Accordingly the appeals fail and the same are dismissed.

4. A copy of this order be placed on the files of connected appeals.