(2009) 09 BOM CK 0147

In the Bombay High Court

Case No : Customs Application No. 24 of 2003

Commissioner of Customs (Preventive) and Another APPELLANT

Vs

Leela Scottish Lace P. Ltd. and Others RESPONDENT

Date of Decision : 24-09-2009

Acts Referred:
Customs Act, 1962 — Section 108, 111, 125

Citation : (2010) 250 ELT 481

Hon'ble Judges : Ferdino I. Rebello, J;D.G. Karnik, J

Bench : Division Bench

Advocate : P.S. Jetly and S.V. Bharucha, for the Appellant; Vikram Nankani and S. Murthi, instructed by M.G. Gawde, for the Respondent

Final Decision : Dismissed

Judgement

Ferdino I. Rebello, J.—By this application, the Revenue has sought reference on the following questions:

Whether from the facts and circumstances of the case, the CEGAT was justified in holding Shri Biren Shah and Naresh Modi as importer and accordingly option to redeem the goods on redemption fine was given to them, ignoring the fact that the real importer in the case was M/s. Leela Scottish Pvt. Ltd. as the documents of the imports were in the name of M/s. Leela Scottish Pvt. Ltd. and the fact was also admitted by Shri Biren Shah and Naresh Modi in their statement recorded u/s 108 of the Customs Act, 1962.

Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the penalty aspect was taken care by the succeeding Commissioner in his order dated 29.9.1992 and hence the department''s objection is not sustainable, even though the succeeding Commissioner has not imposed the penalty in lieu of 16 consignments and penalty ought to have been imposed in the present order taking into consideration the conspiracy between M/s. Leela Scottish Pvt. Ltd., Shri Biren Shah and Shri Naresh Modi, in evading

Customs duty.

2. Earlier in respect of the penalty imposed, we had rejected Revenue''s application for reference on the questions referred to in Customs Application No. 9 of 2003.

3. In the instant case, a few facts may be set out as under. Sixteen consignments had been imported in the name of M/s Leela Scottish P. Ltd. They disclaimed the goods which were traced in the docks and seized. Mr. Biren Shah of M/s Audio Visual Devices P. Ltd., Mr. Naresh Modi of M/s Arjun Impex and Mr. M.D. Pallaria of M/s Giriraj Impex Pvt. Ltd. by their letters dated 8th January 1991 submitted that the goods were ordered by them from foreign shippers for shipment in the name of the Export House and they admitted that there is contravention of Import Policy and Customs Act, 1962. They further agreed to pay the applicable import duty. They waived issuance of show cause notice and did not desire a personal hearing. In view of the facts on record, the Assessing Officer ordered confiscation of 16 consignments u/s 111(o) of the Customs Act. An option was however granted to the respondents to redeem the same on payment of redemption fine of Rs. 15,00,000/and duty at the applicable rate. It was further mentioned that the orders regarding imposition of penalty was to be issued separately.

4. The order of the Assessing Officer was reviewed by the Board which directed preferring of an appeal by the order dated 7th February 1992. An appeal accordingly was filed by the Revenue. The learned Tribunal, after considering various contentions, found that the appeal by the Revenue lacked merit and dismissed the same.

5. It was the submission on behalf of the Revenue by their learned Counsel that the goods in fact were imported by M/s Leela Scottish Lace P. Ltd. and in these circumstances, the Assessing Officer ought not to have allowed redemption of the confiscated goods by the other parties who had cleared the goods.

6. On behalf of the respondents, their learned Counsel submitted that in the instant case the goods were freely importable. It may have been that earlier the goods were sought to be imported by M/s Leela Scottish Lace P. Ltd. M/s Leela Scottish Lace P. Ltd. disclaimed the goods. However, subsequently the goods were cleared by three different persons mentioned earlier who have paid the duty as also the redemption fine claiming right in the goods. In these circumstances, it is submitted that the appeal preferred by the Revenue was rightly dismissed by the learned Tribunal.

7. We have heard the learned Counsel. In our opinion, once the goods were freely importable, it is immaterial as to who first sought to import the goods as long as the goods were cleared according to law. Whatever may be the transaction between M/s Leela Scottish Lace P. Ltd. and the three persons who had subsequently cleared the goods, the previous antecedents to evade customs duty, if any, would be irrelevant as long as the goods were finally cleared by the

said three persons by payment of duty. Section 125 of the Act permits the authority to redeem the goods on payment of fine either to the owner or the persons in possession. In the instant case, the very fact that the goods were redeemed by the three persons, who filed the Bills of Entry, would by itself warrant the conclusion that those three persons claimed right in the goods. Even otherwise, those three persons can be said to be the other persons and therefore the Assessing Officer was right in permitting the said three persons to pay the redemption fine and release the goods.

8. Considering the above, in our opinion, the questions as framed in respect of the reference sought by the Revenue would not arise. Consequently, the application is rejected.