(2003) 04 SC CK 0117

In the Supreme Court Of India

Case No : Civil Appeal No.6982 Of 2001 With C.A.Nos.7048 And 7259 Of 2001

Fortune Impex — APPELLANT

Vs

Commissioner of Customs, Kolkata — RESPONDENT

Date of Decision : 30-04-2003

Acts Referred:
Customs Act, 1962 — Section 114

Citation : (2004) 164 ELT 4

Hon'ble Judges : M. B. Shah, J;Arun Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. These appeals arise out of the common judgment and order dated 3rd July, 2001 passed by the Central Excise and Gold (Control) Appellate Tribunal, Eastern Bench Kolkata (hereinafter referred to as "the Tribunal") in Appeal No. C/RV-21/98 etc. whereby the Tribunal dismissed the appeal filed by the appellants and confirmed a penalty of Rs. four lakhs and upheld the allegations contained in the show cause notice issued by the Assistant Commissioner of Customs, Air Cargo Complex (Exports), Kolkata. Aggrieved by the same, the appellants have filed the aforesaid appeals.

Heard the learned counsel for the parties.

2. Considering the facts and circumstances of the case, in our view, the impugned order passed by the Tribunal does not call for interference. However, it is submitted by the learned counsel for the appellants that the penalty imposed by the Authority is in violation of Section 114 of the Customs Act, 1962 because it is imposed both on the appellant-Company which attempted to export the goods as well as on the Company which had supplied the same. As no such contention was raised before the Tribunal, in our view, this contention is not required to be entertained at this stage in these appeals. We, however, note that it is the submission of the learned counsel for the respondent that Directors/

Partners of both the companies, namely, which attempted to export and which supplied the goods are same.

3. In the result, the appeals are dismissed. There shall be no order as to costs.