(2015) 08 CESTAT CK 0008

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Appeal No. 367 Of 2010

M/s Indian Art Gallery APPELLANT

Vs

CC, New Delhi RESPONDENT

Date of Decision : 12-08-2015

Acts Referred:

Customs Act, 1962 — Section 113(d), 113(e), 113(1), 114
Wildlife (Protection) Act, 1972 — Schedule 1

Citation : (2015) 08 CESTAT CK 0008

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : B.B. Sharma

Final Decision : Dismissed

Judgement

1. Appeal is filed against the order in appeal dated 18.4.2010 which upheld the order in original dated 29.12.2009 in terms of which 41 shawls were

confiscation under Section 113(d), (e) and (1) of the Customs Act, 1962 and penalty of Rs.50,000 /- was imposed on the appellant under Section 114

ibid.

2. The brief facts of the case are as under:

The appellant filed a Shipping Bill dated 4.12.2008 for the export of 1290 number of Pashmina and wool shawls falling under Chapter Heading

62142010 and declared C&F value of Rs.10,56,419/-. Those shawls which were of ""Dyed Pashmina Wool"" were marked for getting No Objection

Certificate from Wildlife authorities. Accordingly, sample of five shawls from packet number 4 was taken up for testing in the laboratory of Wildlife

Institute of India, Dehradun. The test confirmed the presence of hair to Tibetan Antelope in the said five shawls. The hair of Tibetan Antelope is listed at SI No. 36A of Schedule 1 of the Wildlife (Protection) Act, 1972 and export of this item is prohibited. In the wake of this the consignment was

examined 100% and 36 more shawls were identified by the Wildlife officer from the same packet No. 4 (from which the said five shawls were drawn

as sample) to be similar to the said 5 shawls. The adjudicating authority thus confiscated the said 41 shawls under 113(d), (e) & (I) of the Customs

Act, 1962 for being attempted to be exported and penalty of Rs.50,000/- was imposed.

3. When the case was taken up today for hearing there was no representation on behalf of the appellant nor was there any request for adjournment.

Therefore we take up this appeal on merits.

4. In its appeal, the appellant has contend that the prohibition was application only to 41 shawls found in packet No. 4 which contained 249 other

shawls and the adjudicating authority has not given any reasoning for confiscation of the rest of the shawls of packet No. 4. It also questioned the test

report of the Wildlife authorities pleading that Wildlife authorities did not conduct any chemical analysis or any forensic analysis as the report was

silent about that.

5. We have considered the facts of the case. As stated earlier, no one on behalf of the appellant appeared for personal hearing. We also find that in

the reply to the Show Cause Notice the appellant did not seek any cross-examination of the Wildlife authorities. In its appeal it has stated that proper

chemical analysis of the shawls was not conducted by wildlife authorities. The appellant has no basis to assert that when it did not seek any cross-

examination of the wildlife authorities who tested the samples. There can be various ways to test a sample depending upon the purpose of test. In

these circumstances, the order of confiscation of 41 shawls for containing material prohibited for export is sustainable. As regards the contention that

other shawls (other than 41) found in packet 4 should not have been confiscated, we find that the primary adjudicating authority has ordered

confiscation of only 41 shawls and has categorically stated, ""I order for unconditional release of remaining shawls out of 1290 shawls seized along with

their respective packet."" Thus, it is obvious that the confiscation ordered by the primary adjudicating authority and upheld by the first appellate

authority was only with regard to the 41 shawls. As 41 shawls were liable to confiscation on account of being attempted to be exported in spite of

being prohibited for export, the appellant is clearly liable to penalty. The penalty of Rs.50,000/- imposed is neither unreasonable nor arbitrary.

6. In the light of the foregoing discussion, we do not find any infirmity in the impugned order warranting appellate interference. Appeal is dismissed.