

(2015) 03 DEL CK 0376
In the Delhi High Court
Case No : Cus. A.C. 4 of 2014

P.C. Jeweller (Export)

APPELLANT

Vs

Commissioner of Customs Export

RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Citation : (2015) 321 ELT 561

Hon'ble Judges : S. Ravindra Bhat, J; R.K. Gauba, J

Bench : Division Bench

Advocate : Roshan Santhalia, for the Appellant; Kamal Nijhawan, Senior SC and Sumit Gaur, Advocates for the Respondent

Judgement

S. Ravindra Bhat, J—The present appeal is directed against the order of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) dated 21-2-2014 in Customs Appeal No. C/510/2009-CU(DB). The appellant was aggrieved by the imposition of Rs. 3 lakhs as penalty and redemption fine of Rs. 1 lakh. Appellant had sought benefit of Notification No. 52/2003 and claimed that certain quantity of gold jewellery imported by it was for the purpose of re-export after repair/remaking. Customs authority at the time of importation of jewellery, examined the same. Out of four items, one weighing 3197.200 gms. finished ladies gold chain (twisted rope type), normally worn with pendants, was assessed to be falling within the purview of show cause notice (SCN), since it was a marketable commodity. The assessee upon being served the SCN dated 27-5-2009, resistedly proceeded in contending that these chains are to be assembled with mountings received in the said consignment in semi finished condition. The mountings are to be studded with required studdings and chains are to be assembled with mountings and remade items to make them complete item of jewellery, further these are to be polished and finished to make them saleable in international market. The assessee/appellant also stated that it was under a bona fide belief that it was entitled to get jewellery for export after repair or re-make. The Customs Commissioner had vide Order-in-Original dated 3-6-2009

confirmed the SCN and imposed penalty to the extent of Rs. 3 lakhs and redemption fine to the tune of Rs. 1 lakh. This order was appealed against, the CESTAT vide impugned order rejected the appeal. It is argued on behalf of the appellant that firstly the CESTAT summarily rejected the appeal and that this was a pattern given that it had considered the merits of the contentions and passed an unreasoned order. Secondly, it was urged that among five items which were scrutinized, four were allowed the benefit of exemption of notification. Learned counsel stated that similar goods were also furnished and marketable, nevertheless the customs authority held that they could receive the benefit of exemption. However, the customs authority in an unreasoned manner rejected the exemption in favour of the one item in question. The learned counsel for the respondent on the other hand submitted that the impugned order does not require interference. He pointed out that the appraiser report was never challenged, giving the clear finding that the ladies gold chain was finished in nature. The notification which the appellant relies upon - dated 31-3-2003 (No. 52/2003), enables importation of gold jewellery for remake. The importation of old gold/platinum/silver jewellery, if imported for repair or remake for re-export, is exempted from payment of customs duty. The appraiser report - which does not appear to have been challenged in the present instance, clearly points out that 3197.200 gms. gold chain, were "finished" and compared with the other items imported - concededly three of them were not marketable. The appellant urges that one of the items allowed to be imported, described as "assorted gold bangles of different designs/sizes, appears to be old but not used", like subject goods were finished products. However, this Court notices that the description itself facially suggests that these items were lacking in lustre and further processing such as polishing would enhance the lustre to make the product for marketable. The exercise of appraisal not having been challenged, the terms of the notification itself permit a certain element of discretion with the customs authority, who after taking into account the nature of the goods could permit them to be imported as items prescribed or determine the duty. That discretion having been exercised in the first instance and the appellant having been given a hearing at the show cause stage, this Court does not see any question of law which can be termed as substantial to engage attention. All the disputes sought to be urged relate to findings of facts, the appeal is consequently dismissed.