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(2013) 01 KAR CK 0192

In the Karnataka High Court

Case No : CSTA No. 16 of 2005

The Commissioner of Customs, Bangalore — APPELLANT

Vs

Naveed Ahamed Khan — RESPONDENT

Date of Decision : 09-01-2013

Acts Referred:
Customs Act, 1962 — Section 111, 111(e), 123

Citation : (2013) 75 KarLJ 168

Hon'ble Judges : D.V. Shylendra Kumar, J;B. Manohar, J

Bench : Division Bench

Advocate : N.R. Bhaskar, Central Government Standing, for the Appellant;

Judgement

D.V. Shylendra Kumar, J.—This appeal is directed against the common order dated 7-12-2004 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore in Appeal C. No. 378 of 2003. The revenue is in appeal contending that the Tribunal has decided the following substantial questions of law erroneously:

1. Whether the Tribunal was correct in holding that there is no burden on the person in possession of goods with foreign markings without any valid documents since they are not notified goods u/s 123 of the Customs Act, 1962?

2. Whether the Tribunal has committed error in setting aside the order of the adjudicating authority dated 22-3-2002 as also the order of the Appellate Authority dated 15-9-2003?

3. Whether the Tribunal has committed error in ordering that respondent is entitled to receive the value of the goods as shown in mahazar report?

4. Whether the Tribunal committed an error in holding that the goods in question cannot be confiscated u/s 111 of the Customs Act, 1962 more particularly u/s 111(e)?

5. Whether the Tribunal committed an error in not considering the actual import

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of the meaning envisaged u/s 135 of the Customs Act, 1962?

6. Whether the Tribunal committed an error in not considering the effect of presumption of culpable mental state as per Section 138-A of the Customs Act?

2. The Tribunal following the law said to have been laid down in the common judgment under appeal, had allowed several such appeals of the assessee, particularly, relating to the question of the burden of proof being on the revenue to establish that particular goods in possession seized by the assessee is of foreign origin.

3. One such decision of the Tribunal purporting to follow the common judgment which is subject-matter of this appeal had been the subject-matter of the order dated 29-9-2011 rendered in CSTA No. 33 of 2006, an appeal at the instance of the revenue raising very questions.

4. This appeal had come to be allowed by this Court pointing out that reasoning of the Tribunal in taking the view that the burden was on the revenue was fallacious; that it was not the law laid down by the Apex Court and therefore allowed that appeal.

5. That view equally holds good is the submission of Sri Bhaskar, learned Standing Counsel appearing for the appellant.

6. The respondent though served is not represented.

7. In this view of the matter, this appeal is allowed.

8. The questions raised in this appeal are answered in favour of the appellant-revenue. The order of the Tribunal is set aside and the order passed by the original authority and the First Appellate Authority is restored. It is also open to the appellant-revenue to recover the amount if refund had already taken place in respect of the amount due by the assessee, but on the basis of the order passed by the Tribunal.

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