(2009) 12 P&H CK 0155

In the Punjab And Haryana At Chandigarh

Case No : FAO No. 15 of 2008 (O&M)

Ved Dewan APPELLANT

Vs

Asstt. Dir., Enforcement Directorate, Jalandhar RESPONDENT

Date of Decision : 10-12-2009

Acts Referred:

Citation : (2017) 346 ELT 182

Hon'ble Judges : Rajesh Bindal, J.

Bench : Single Bench

Advocate : Shri Jagmohan Bansal, Advocate, for the Appellant; Mrs. Anjali Kukar, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Rajesh Bindal, J.—On 2-12-2009, the following contentions of learned counsel for the appellant were noticed and learned counsel representing the respondent had sought time to go through the order passed by the CESTAT, which was upheld by this Court :-

"Learned counsel for the appellant submits that the penalty under Foreign Exchange Regulation Act, 1973 was levied against the appellant for alleged violation of the terms on which the appellant had got foreign exchange. The case of the department is that as against import of scrap he imported fresh material. In fact while passing the order in the present case the Tribunal relied upon an order passed by the Commissioner, Customs against the appellant by noticing the fact that the same had attained finality as the appellant did not challenge the same. In fact the order of Commissioner, Customs was challenged by the appellant before the Customs, Excise ad Service Tax Appellate Tribunal, where the order passed by the Commissioner, Customs was set aside. In appeal by the Revenue to this court order of the CESTAT was confirmed as a result of which the fact now established is that the appellant had imported scrap for which he had sought foreign exchange. Considering the order passed by the CESTAT as upheld by this Court it cannot possibly be said that there is violation of Foreign

Exchange Regulation Act and accordingly the levy of the penalty on the appellant is totally unjustified."

2. As is evident from the facts noticed above, the penalty on the appellant was levied with the allegations that he had not used the foreign exchange for the purpose it was released to him whereas in the order passed by the CESTAT, which was confirmed by this Court, it has been established that the appellant had, in fact, imported iron and steel scrap for which he had got the foreign exchange. Once it is established from the orders passed by the CESTAT as upheld by this Court that the appellant had imported the material which is iron and steel scrap and the foreign exchange was issued to the appellant for that purpose only, it cannot be said that there is any violation of the provisions of the Foreign Exchange Regulation Act, 1973 (for short, "the Act"). If violation is not established, penalty on the appellant cannot be levied. In fact, as is evident from the proceedings, the levy of penalty on the appellant under the Act was upheld by noticing that the appellant had not challenged the orders passed by the Commissioner (Appeals) under the Customs Act which was, in fact, not correct as subsequently that order was set aside by the CESTAT, as upheld by this Court.

3. Considering the aforesaid facts, the impugned order passed by the learned Tribunal cannot be sustained and it is accordingly set aside.

4. The appeal stands disposed of.