

Hargovind Das K. Joshi and Others

Vs

Collector of Customs and Others

Civil Appeals Nos. 139 to 143 of 1985

(M. P. Thakkar, B. C. Ray JJ)

06.01.1987

### JUDGMENT

1. These appeals are capable of being of on a short ground. The Additional Collector of Customs by an order dated December 30, 1982 confiscated a consignment of goods (zip fasteners) imported by the appellants and imposed a penalty on the appellants. The said order has been confirmed by the Customs, Excise and Gold (Control) Appellate Tribunal by its judgment and order dated November 27/28, 1984.

2. Three questions have been raised by the appellants :

(1) Validity of the order confiscating the goods.

(2) Validity of the order imposing penalty.

(3) Failure to give to the appellants for redeeming the goods on payment of such fine as may be determined by the Collector of Customs in lieu of confiscation.

3. We are of the view that insofar as the order directing confiscation of the goods is concerned, it is unassailable in facts or in law. So also the order levying penalty is justified by facts and warranted by law. There is, however, substance in the last contention urged on behalf of counsel for the appellants. The Collector of Customs has passed an order for absolute confiscation of the imported goods without giving the appellants an option to redeem the same on payment of such fine as may be considered appropriate by him. Reliance has been placed by learned counsel for the appellants on section 125(1) of the Customs Act in support of the plea that the Collector has the discretion to pass such an order and he should have addressed himself to the question whether or not the discretion should be so exercised having regard to the facts and circumstances of the case. The Additional Collector of Customs who passed the order of confiscation undoubtedly had the decision to give an option to the appellants to pay a fine in lieu of confiscation. Presumably the Additional Collector of Customs assumed that he was bound to confiscate the goods because he was not adverted to this aspect in his order. He had undoubtedly the territory under law to give an option to the importers to pay such fine as was considered appropriate by him (not exceeding the full market value of the goods in question) in lieu of confiscation of the goods. We are of the opinion that since the Additional Collector of Customs who passed the order for absolute confiscation had the desecration to give the option for redemption, it was but just, fair and proper that he addressed himself to this question. The order passed by the Additional Collector of Customs as confirmed by the Customs, Excise and Gold (Control) Appellate Tribunal therefore requires to be modified only to this limited extent.

4. We therefore direct that the matter be remitted to the Collector of Customs for this limited purpose to this limited extent as to whether or not to give an option to the importers (appellants) to redeem the confiscated goods on the payment of such fine as may be considered appropriate by him in lieu of confiscation. It will be open to the concerned officer to take a decision one way or the other in accordance with law as is considered appropriate in the circumstances of the case after hearing the appellants. We have no doubt that the concerned officer will take into consideration all the relevant circumstances including the submission urged on behalf of counsel for the appellants that the goods in question, zip fasteners, can at present be imported freely, for whatever it is worth.

5. The appeals are, therefore, dismissed subject to modification to the aforesaid limited extent. There will be no order as to costs.

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