

Sufficient reasons are required to sustain the charge of abatement

The CESTAT Bangalore, in the case of ***Mr. Rafeek K.T. v. Commissioner of Customs, Cochin [Customs Appeal No. 20074 of 2020 dated October 25, 2023]*** allowed the Appeal and held that the penalty cannot be imposed on the Appellant solely based on the retracted statement when there is no other admissible evidence to prove the involvement of the Appellant in illegal import.

Facts:

The Revenue Department (**“the Respondent”**) imposed penalty on Mr. Rafeek K.T. and Mr. Jasim N.P. (**“the Appellants”**) under Sections 112 & 114 of the Customs Act, 1962, vide order dated September 20, 2019 (**“the Impugned Order”**) wherein it is stated that the Appellants had abated the importer M/s. Pushpa Telecom (**“the Importer”**) to import goods by way of undervaluation of goods.

Aggrieved by the Impugned Order, the Appellants filed the appeal before CESTAT, Bangalore.

The Appellants contended that the finding of the Respondent Adjudicating Authority is without any admissible evidence and the Appellants have not committed any act through which it can be alleged that the Appellants had abated the importer M/s. Pushpa Telecom to import goods illegally. The Appellants further submitted that there are no allegations that neither the Appellants have prepared any invoice, nor any evidence exists to prove the involvement of the Appellants in abating the import of goods illegally by undervaluing the goods. It is stated that the importer has paid customs duty, redemption fine, and penalty and also goods were released to the importer. Also, no prohibited goods were imported by the Importer to invoke provisions of Section 111(d) of the Customs Act, 1962. The Appellants further submitted that, in the absence of any evidence, it is found that goods are liable to be confiscated and the Appellants have extended some assistance to the importer as alleged in Show Cause Notice, it should not be presumed that the Appellants are importing the goods.

Issue:

Can a penalty be imposed for abetting the importer in the illegal importation of goods?

Held:

The CESTAT, Bangalore in the case of ***Customs Appeal No. 20074 of 2020*** held as under:

- Observed that, during the pendency of the investigation the importer approached the Hon'ble Kerala High Court. The High Court vide its order directed the Respondent to release the goods which were duly complied with and goods were released to the Proprietor of the Importer firm.
- Noted that, when the importer of goods appears before the High Court and the High Court directs the Respondent to release the goods confiscated, there is no reason to consider the said importer as a proxy importer as considered by the Respondent Adjudicating Authority.
- Further Noted that, without any evidence, it is incorrect to consider the statement of the Proprietor of the Importer firm alleging that the Appellants are involved in illegal import.
- Opined that, there is no evidence against the Appellants to allege that, the Appellants are actively involved in the illegal import of goods by communicating with overseas agencies or by transferring any amount through illegal channels. Further, it cannot be concluded that the Appellants are involved in illegal import when the Appellants only handed over the documents pertaining to import, to the clearing agent.
- Held that, the Appeal is allowed.

Author can be reached at info@a2ztaxcorp.com)

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