CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

COURT NO.1

Appeal(s) Involved:

C/20618/2019-SM

[Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-87/2018-19 dated 30/01/2019 passed by Commissioner of CUSTOMS , COCHIN(Appeal)]

David John
Aged 40 Years Son Of Pd Johnson Pudukadan
House Cheroor Road
THRISSSUR
KERALA
680020

Appellant(s)

Versus

Commissioner Of Central Tax & Central Excise, Cochin
C.R. Buildings, I.S Press Road
Cochin
Kerala
682018

Respondent(s)

Appearance:

Shri G HARIHARAN Advocate
NO 702 7TH FLOOR TRAVANCORE TWINGLE OFFICE APARTMENTS KANNACHANTHODU ROAD AYYAPPANKAVU PACHALAM P O
KOCHI
KERALA
682012

For the Appellant

Shri Rama Holla, Superintendent(AR)

For the Respondent

CORAM:
HON'BLE SHRI S.S GARG, JUDICIAL MEMBER

Date of Hearing: 30/09/2019
Date of Decision:21/10/2019

Final Order No. 20875 /2019

Per : S.S GARG

The present appeal is directed against the impugned order dt. 30/01/2019 passed by the Commissioner of Customs (Appeals) whereby the Commissioner(Appeals) has rejected the appeal of the appellant and upheld the Order-in-Original.

2. Briefly the facts of the present case are that the appellant had imported one MGH I Air Pistol Cal. 4.5 (Make "match guns" by Cesare Morini) as Post Parcel through the Postal Appraising Department and sought clearance as a freely importable item. The adjudicating authority had found that the importer, who is a founder member of the Thrissur District Rifle Association had not submitted any documents to suggest that he falls under the category of 'renowned shooter'. Further, the adjudicating authority has held that even if the importer falls under the category of 'renowned shooter' the notification does not provide for any exemption to the impugned item from the applicability of the Arms Act or Rules. Another finding of the adjudicating authority in this regard was that the Arms Act and Rules clearly prescribe that all air weapons including the Air Rifles and Air guns require a licence unless these are having muzzle energy below the prescribed limit of 20 Joules. Thus in both the cases i.e. where the muzzle energy exceeds 20 Joules and also where the bore exceeds 0.177, a licence is mandatory. The importer had failed to furnish the proof that the air pistol imported is having muzzle energy below the prescribed limit of 20 Joules. Therefore the adjudicating authority has held that the subject import had violated the provisions of Foreign Trade (Exemption from Application of Rules in Certain Cases) Amendment Order 2017 read with Arms Act, 1959 and hence confiscated the goods absolutely. Aggrieved by the said order of the original authority, the appellant filed appeal before the Commissioner(Appeals) who rejected the same. Hence the present appeal.

3. Heard both sides and perused the records.

4. Learned counsel for the appellant submitted that the

impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that the import of 0.177 bore Air Guns and Air pistols is free for shooters registered with Rifle Clubs or District/State/National Rifle Association. Further as per Customs Notification No.21/2008, as against Sl.No.582, Air Rifles or Air Pistols of 0.177 calibre are totally exempted from import duty. He further submitted that Rule 2(2) of the Arms Rules, 2016 clearly defines Air Weapons including Air rifles into two:-

i. Bore exceeding 0.177 or 4.5 mm and/or energy exceeding 20 joules;
ii. Energy less than 20 joules and bore less than 0.177 or 4.5 mm.

Therefore it is statutory presumption that air pistols with bore less than 4.5 mm or 0.177 inch will not have joules value exceeding 20. The learned counsel further submitted that the appellant is a shooter and is a member of National Rifle Association of India. He further submitted that he has produced the original invoice wherein it is categorically mentioned that the 'Air pistol with power less than 7.5 joule and bore not exceeding 4.5 mm/0.177. He further submitted that this document was produced before the Commissioner(Appeals) but the same was not considered and the Commissioner(Appeals) has wrongly held that the appellant has not produced any document to prove that the imported air gun is having a muzzle energy not exceeding 20 joules. He further submitted that the imported weapon is freely importable because it has power less than 7.5 joules and bore is less than 0.177 or 4.5mm and does not require any licence. In support of this, the appellant has relied upon the decision in the case of Nishant Sanjay Ghogare Vs. CC, Airport, Mumbai [2018(363) ELT 872 (Tri. Mum.)]

5. On the other hand, the learned AR defended the impugned order.

6. After considering the submissions of both sides and perusal of the material on record, I find that the appellant is a shooter and is a member of National Rifle Association of India and is also a member of Thrissur Rifle Association. Further I find that as per the invoice dt. 12/09/2017, it is clearly mentioned in the description that the air pistol is having the power less than 7.5 joules and bore less than 4.5 mm / 0.177. Further I find that in view of the Arms Rule, a weapon having this description is freely importable and does not require any licence. Moreover, if any licence is required under the Arms Act, the same can be obtained after getting the weapon from the Customs Department. Confiscation of the weapon is unwarranted in view of the description given about the weapon in the invoice produced by the appellant. Both the authorities have not properly considered the invoice which is the document vide which the appellant has purchased the said weapon. In view of the description given in the invoice, I am of the considered view that the impugned order confiscating the weapon is unsustainable in law and therefore I set aside the same by allowing the appeal of the appellant.

(Order was pronounced
in Open Court on **21/10/2019**)

S.S GARG
JUDICIAL MEMBER

Raja...