

[2009] 9 S.C.R. 17

COMMISSIONER OF CUSTOMS, AMRITSAR

v.

M/S. AJAY KUMAR AND CO.
(Civil Appeal No.645 of 2008)

MAY 8, 2009

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]

Customs Act, 1962 – Ss.28(1) and 111 – Purchase of transferable Duty Entitlement Pass Book (DEPB) including licence – Show cause notice issued to transferee licence-holder without making any reference therein to the alleged infraction of the original licence-holder – Held: The show cause notice was defective – Appeal filed by Revenue dismissed.

Commissioner of Customs (Import) Bombay v. M/s. HICO Enterprises (2008) 11 SCC 720, relied on.

Case Law Reference:

(2008) 11 SCC 720 relied on Para 4

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 645 of 2008.

From the Judgment & Order dated 15.03.2007 of the High Court of Punjab & Haryana at Chandigarh in Customs Appeal No. 17 of 2006.

WITH

C.A. No. 2529 of 2008.

P.V. Shetty, S.K. Bagaria, Arvind K. Shukla, S.N. Terdol, G.D. Mishra, P. Narasimhan, B. Krishna Prasad, B.V. Balaram

A Das, Rajesh Kumar, Javaid Muzaffar and Umesh Kumar for the appearing parties.

The Judgment of the Court was delivered by

B **DR. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is to the order passed by the Punjab & Haryana High Court upholding the order of the Customs, Excise & Service Tax Appellate Tribunal, New Delhi (in short 'CESTAT') dismissing the appeal filed by the appellant.

C 2. Background facts in a nutshell are as follows:

D Respondent acquired and/or purchased transferable Duty Entitlement Pass Book (in short the 'DEPB') including licenses dated 6.11.2000 and 20.11.2000 issued in the name of M/s. Parker Industries. By show cause notices dated 30.5.2002, 12.6.2002 and 26.7.2002 Respondent was called upon to show cause why an amount of Rs.12,45,174/- could not be recovered and demanded in terms of proviso to Section 28(1) of the Customs Act, 1962 (in short the 'Act'). Noticee denied the allegations.

E However, Commissioner of Customs, Amritsar confirmed the demand along with interest and penalty. Same was held to be jointly payable by the original license holder and licensee. It was held that goods were liable in confiscation under Section F 111 of the Act.

The Tribunal allowed the appeal by respondent holding the demand to be barred by limitation. The High Court upheld the view.

G 3. In this appeal challenge is to the aforesaid conclusions. Learned counsel for the respondent pointed out that no role was ascribed to it in the show cause notice.

H 4. It is seen that in view of the fact that in the show cause notices, there was no reference to the alleged infraction of

COMMISSIONER OF CUSTOMS, AMRITSAR v. AJAY 19
KUMAR AND CO.

M/s. Parker Industries, the transferor of the license in question. The judgments of the CESTAT and the High Court do not suffer from any infirmity to warrant interference. It is to be noted that in *Commissioner of Customs (Import) Bombay v. M/s. HICO Enterprises* [2008 (11) SCC 720] similar view was taken. The appeal is dismissed.

A

B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2529 of 2008.

DR. ARIJIT PASAYAT, J. In view of the judgment of this Court in *Commissioner of Customs (Import) Bombay v. M/s. HICO Enterprises* [2008 (11) SCC 720], this appeal deserves to be dismissed which we direct accordingly.

C

B.B.B.

Appeals dismissed.