

Vishal Electronics Pvt. Ltd. Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-09-1997

Reported in : (1997)(71)LC612Tri(Mum.)bai

Judge : R T Lajja, S Kang

Appellant : Vishal Electronics Pvt. Ltd.

Respondent : Cc

Judgement :

1. In this appeal filed by M/s. Vishal Electronics Pvt. Ltd., the matter relates to the claim for refund of excess customs duty paid on 18.6.1979 when the refund claim was filed on 8.5.1980 beyond the statutory time limit for filing refund claims of six months. The goods involved are Deflection Coils for closed Circuit T.V. Camera. The Collector of Customs (Appeals) had observed that the refund claim was filed beyond the time limit prescribed under Section 27 of the Customs Act, 1962, while their claim of classification under Customs Tariff Heading No. 85.15 was accepted, their claim for refund was rejected.

2. The appellants have submitted that when earlier their refund claim was rejected on the ground of time bar, they had approached the Bombay High Court and the Bombay High Court had remanded the matter to the Asstt. Collector of Customs for the purpose of properly classifying and passing suitable orders as he deems it fit without confining himself to the issue of limitation only.

3. The Asstt. Collector in the remand proceedings had examined the matter on merits and had held that besides the claim being time barred even otherwise the goods were not classifiable under Heading No. 85.15.

4. The matter was fixed for hearing on 9.4.1997. The appellants have prayed for decision on merits.

5. On behalf of the Revenue, Shri K.K. Jha, SDR submitted that it is the settled position in law that the statutory authorities under the Customs Act, 1962 cannot go beyond the law of limitation as contained in that Act. He referred to the Supreme Court's decision in the case of *HOI v. Kirloskar Pneumatic Co. Limited* 1996 (64) ECR 509 (SC) where the Apex Court had held that the High Court could not direct the Customs Authorities acting under the Customs Act to act contrary to the mandatory provisions as contained in Section 27 of the Customs Act, 1962. He also referred that the Hon. High Court had given no direction that the claim should be accepted even when filed beyond the period of limitation and have directed the jurisdictional authorities not to confine themselves to the issue of limitation only but to examine the matter for proper classification also. He submitted that the view taken by the Collector of Customs (Appeals) is in consonance with the principles laid-down by the Apex Court.

6. We have carefully considered the matter. There is no dispute that the refund claim was filed on 8.5.1980 in respect of customs duty paid on 18.6.1979. Under Section 27 of the Customs Act, 1962, the claim for refund of duty had to be lodged before the expiry of six months from the date of payment of duty. The duty had not been paid under protest.

Therefore, the claim for refund was obviously time barred. The appellants in their appeal memo had submitted that the Bombay High Court had in their writ petition remanded the matter to the Asstt.

Collector of Customs, "for the purpose of properly classifying and passing suitable orders as he deems it fit without confining himself to the issue of limitation only". The Hon'ble High Court had not ordered the Customs Department to ignore the limitation under Section 27 but had directed that the matter should also be

examined on merits. In pursuance of the High Court's directions, the Asstt. Collector of Customs had examined the matter on merits and had decided against the appellants both on the issue of time bar as well as on merits. On appeal, the Collector of Customs had decided the classification favour of the appellants but had held the claim to be barred by limitation. Collector of Central Excise, Chandigarh v. Doaba Cooperative Sugar Mills had held that for the refund claims made before the Departmental Authorities - the limitation provided under the Customs Act/Central Excise Act or the Rules made thereunder was applicable and that the Authorities functioning under the Act were bound by those provisions. The Supreme Court had referred to their earlier decision in the case of Miles India Ltd. v. Asstt. Collector of Customs 1987 (30) ELT 640 (SC) : 1985 ECR 289 (SC) : ECR C 750 SC : ECR Cus 1094 SC.8. In the case of HOI v. Kirloskar Pneumatic Co. Ltd. reported in 1996 (64) ECR 509 (SC), the Supreme Court had held that the refund claim had to be filed under Section 27 of Customs Act, 1962 which inter alia prescribes period of limitation and that the High Court could not direct the Customs Authorities acting under the Customs Act to act contrary to the mandatory provisions of Section 27 of the Customs Act.

Para-11 from that decision is extracted below: 11. According to these Sub-sections, a claim for refund or an order of refund can be made only in accordance with the provisions of Section 27 which inter alia includes the period of limitation mentioned therein. Mr Hidayatullah submitted that the period of limitation prescribed by Section 27 does not apply either to a suit filed by the importer or to a writ petition filed by him and that in such cases the period of limitation would be three years. Learned Counsel refers to certain decisions of this Court to that effect. We shall assume for the purposes of this appeal that it is so, notwithstanding the fact that the said question is now pending before a larger Constitution Bench of nine Judges along with the issue relating to unjust enrichment. Yet the question is whether it is permissible of the High Court to direct the authorities under the Act to act contrary to the aforesaid statutory provision. We do not think it is, even while acting under Article 226 the Constitution.

The power conferred by Article 226/227 is designed to effectuate the law, to enforce the Rule of law and to ensure that the several authorities and organs of

the State act in accordance with law. It cannot be invoked for directing the authorities to act contrary to law. In particular the Customs authorities, who are the creatures of the Customs Act, cannot be directed to ignore or act contrary to Section 27, whether before or after amendment. May be the High Court or a Civil Court is not bound by the said provisions but the authorities under the Act are. Nor can there be any question of the High Court clothing the authorities with its power under Article 226 or the power of a civil court. No such delegation or conferment can ever be conceived. We are, therefore, of the opinion that the direction contained in Clause (3) of the impugned order is unsustainable in law. When we expressed this view during the hearing. Mr. Hidayatullah requested that in such a case the matter be remitted to the High Court and the High Court be left free to dispose of the writ petition according to law.

9. In the context of un-just enrichment, the Hon'ble Supreme Court in their format order in the case of Asstt. Collector of Customs v. Anam Electrical Manufacturing Co. 1990 ELT 260 (SC) have also dealt with the matter of refund when the refund claim application was filed beyond the period prescribed by the Customs Act and had held that such refund application must be held to be un-tenable in law.

10. In view of the settled position in law, we do not find any infirmity in the views taken by the Collector of Customs (Appeals). As a result, the appeal is rejected. Ordered accordingly.

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