

**Prima Source Technologies (P) Vs. Commr. of C. Ex. and Cus.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

**Decided On :** Jul-17-1997

**Reported in :** (1997)LC631Tri(Chennai)

**Appellant :** Prima Source Technologies (P)

**Respondent :** Commr. of C. Ex. and Cus.

**Advocate for Pet/Ap. :** Shri. Kumara Swami

**Judgement :**

1. This appeal is directed against the orders passed by the Commissioner (Appeals) in Order No. 252/95 ACC, dated 8-5-1995. The question, which arose for consideration, was whether the date of presentation of the Bill of Entry was 6-2-1995 when the same was actually filed by the Appellant to Air Cargo on 28-3-1995 when the Bill of Entry was formally noted by the Import Department for the purpose of assessment of the goods to duty.

2. The adjudicating authority held that the date of presentation of the Bill of Entry should be taken as 6-2-1995. The case of the appellant is that the date of presentation .of the Bill of Entry should be taken as 28-3-1995.

3. The lower appellate authority decided the issue and held that the date of presentation of the Bill of Entry should be taken as 6-2-1995.

The learned Consultant Shri Kumara Swami appearing for the appellants contended before us that in view of Section 46 of the Customs Act, the relevant

date could be taken when the same was presented before the proper officer who is designated for this purpose. He pointed out that for the convenience of the department, they have developed a procedure that it should be submitted first to the appraiser officer in the group for scrutiny and the vigour of Section 46 cannot be taken away by this arrangement.

4. He pointed out that it is only when the Bill of Entry came to the proper officer who is designated for this purpose and only when the proper officer makes an entry in this behalf that alone is to be taken as the relevant date.

5. In this connection, he also produced before PN161 /78 in S. No. 29 of the same, it was mentioned as follows : "29. 46 (1) Entry of goods B/E admission clerk in the on importation ACC." 6. The learned SDR Shri Victor Thiagaraj pointed out that for all purposes when the department had developed a procedure and in terms of that procedure when the Bill of Entry was presented by the appellant that the date of presentation to the concerned clerk should be taken as the date of presentation within meaning of Section 46 of the Customs Act.

7. It was pointed out by the SDR that ultimately the same may reach the proper officer on a later date but it was his submission that this will not change the date of presentation as was actually dated on which the appellant presented before the concerned clerk. He also pointed out that in this case, the Bill of Entry was presented on 6-2-1995 and the very same date examination was ordered.

8. The learned Consultant Shri Kumara Swami quoted Section 17 of the Customs Act which reads as follows : "The relevant of the above such section is stated that the examination of the goods can only be done after entry in this behalf is made under Section 46 of the Customs Act." 9. The learned SDR in this connection relied on the decision of the Bombay High Court reported in 1988 (38) E.L.T. 401 and stated that the date of presentation is actual date and therefore he states that the appeal is to be dismissed.

10. We have considered submission of the both sides. In order to appreciate the arguments of the both sides, we reproduce Section 46 of the Customs Act which reads as follows : 46. Entry of goods on importation. - (1) The importer of any

goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting to the proper officer a bill of entry for home consumption or warehousing in the prescribed form : Provided that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this Sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under Section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(3) A bill of entry under Sub-section (1) may be presented at any time after the delivery of the import manifest or import report as the case may be: Provided that the Collector of Customs may in any special circumstances permit a bill of entry to be presented before the delivery of such report: Provided further that a bill of entry may be presented even before the delivery of such manifest if the vessel by which the goods have been shipped for importation into India is expected to arrive within a week from the date of such presentation.

(4) The importer while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods.

(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.

11. It is thus seen that under Section 46, the importer of any goods shall make entry thereof by presenting the Bill of Entry to the proper officer. The proper officer alone has to make an entry in this regard in terms of Section 46 of the Customs Act. In the Customs Act proper officer is defined (Section 34) as follows: "proper

officer", in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Collector of Customs." 12. A perusal of this definition goes to show that proper officer in relation to any functions to be performed under this Act means the officer of Customs who is assigned those functions by the Board or Collector of Customs. In the present case as has been pointed by the learned consultant the clerk to whom the Bill of Entry was presented is assigned that function by the Collector of Customs.

13. He, therefore, pointed out that Appraiser was not the proper officer who was assigned this function by the Collector of Customs. On the last date of hearing we had given time to the learned SDR to find out as to whether the Appraiser was assigned the function of a proper officer in terms of Section 46 of the Customs Act. But the learned SDR could not throw any light in this regard and no circular in this regard was furnished before us to say that the Appraiser was assigned with the functions of the proper officer by the Collector of Customs or by the Board for the purpose of Section 46 of the Customs Act.

14. It is also now brought to the notice that this procedure of presenting the Bill of Entry for scrutiny by the Appraiser is now discontinued and it was only done in terms of administrative orders.

15. In this connection, relevance was placed by the learned SDR on the decision of the Bombay High Court reported in 1988 (38) E.L.T. 401. We have gone through the above decision of the Hon'ble High Court, Bombay.

In that particular decision, the question with respect of the presentation of Bill of Entry to the proper officer under Section 46(1) never arose for consideration.

16. In that particular case, the presentation of Bill of Entry was on 12-3-1987 in wrong form and importer was advised to file a correct form. In those circumstances, it was held that the date of presentation was on 12-3-1987. The question of presenting the Bill of Entry to the proper officer never arose in that case. Therefore, that decision is not an authority for the case which is now before us.

17. In this view of the matter, we hold that this decision will not come to the help of the Revenue. It is now seen that the Customs Act is complete Code by itself and under that Act and in terms of Section 46, the Bill of Entry has to be presented to the proper officer. Therefore, we are taking into consideration the wordings as well as the intention of the legislature which shows that the Bill of Entry has to be presented to the proper officer and when the proper officer has to make an entry in this behalf. The spirit of Section 46 cannot be departed by the Tribunal. There cannot be any departure from the spirit of this section and the wordings thereon by an administrative order of department for facilitating the process of the Bill of Entry. The Tribunal being a creature of statute cannot depart from the provision of Section 46 and uphold the contentions of the department, in the light of the administrative order passed in this regard.

18. In this view of the matter, we are of the view that the date on which the proper officer has received the Bill of Entry is the correct date for the purpose of assessment and accordingly appeal is allowed in the above terms.

19. The learned SDR pointed out under Section 5(2) of the Customs Act, an Officer of Customs may exercise the powers and discharge his duties of Customs who is subordinate to him. Therefore, the condition to be satisfied is that this particular officer who was appointed as the proper officer is subordinate officer.

20. The officer who receives the Bill of Entry has to make an entry for the same in manifest and also the date of the bill of entry for the entry has to be endorsed and all these functions are to be done by the proper officer when he receives, the Bill of Entry.

21. Making entry of the goods on importation on the Bill of Entry is not a mere exercise of physically handing over of the Bill of Entry, but also involves the procedure for the entry of the Bill of Entry in the prescribed statutory registry of the manifest and it is only after the entry is made that the entry of the goods by filing of Bill of Entry can be taken as statutorily done. There is no plea from the revenue that this exercise was done by the Appraiser.

22. In view of the above, we do not see any force in the pleas advanced on behalf of the revenue and this appeal is accordingly allowed.

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