

Alaska Exports Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-27-1999

Reported in : (2000)(90)LC593Tri(Delhi)

Judge : P Jain, Vice, P Chacko

Appellant : Alaska Exports

Respondent : Cc

Judgement :

1.1. The appellants herein imported certain goods. They filed a warehousing Bill of Entry on 25.8.1995. The goods were accordingly warehoused after proper assessment. On 3.11.1995 ex-bond Bill of Entry was filed by the appellants seeking clearance of the goods from the warehouse. On 6.11.1995 goods were ordered to be cleared by the concerned authority. However, the goods could not be actually removed or cleared from the warehouse on that date, Actual delivery of the goods was taken by the appellants on 16.11.1995. In the meantime, by a Notification No. 159/95, anti-dumping duty was imposed on 14.11.1995. Revenue obviously was not aware about imposition of duty because the goods were cleared without payment of any anti-dumping duty on 16.11,1995. Later on a show cause notice was issued by the Revenue to the appellants herein asking them to show cause as to why duty of Rs. 2,55,418 be not recovered as antidumping duty had been imposed on the goods prior to the date of actual removal of the goods as mentioned above. Demand of duty has been confirmed against the appellants by the concerned Assistant Collector vide order in original dated 16.9.1996. The

appellants did not succeed before the lower appellate authority. Hence this appeal.

2. Learned advocate, Shri Jitinder Singh for the appellants submits that while the legal position regarding the rate of duty as prevalent on the date of removal of the goods from the warehouse is settled against the appellants, he makes another plea before us which was not taken by the appellants before the lower authorities. His plea is that the anti-dumping duty, although supposed to have been brought into force w.e.f. 14.11.1995 was not levied by the department on the date of removal of the goods i.e. 16.11.1995. He, therefore, submits that the department was not aware about the issue of said Notification No.159/95 imposing the said anti-dumping duty. The importers, namely, the appellants herein were also not aware of the said notification imposing the said anti-dumping duty. He submits that it is a settled position in law that effect of the notification imposing a duty has to be given effect from the date from which the general public is made aware of it.

For this proposition he relies on Supreme Court's judgements in the cases of CCE v. New Tobacco Company reported in 1998 (24) RLT 457 (SC) : 1998 (74) ECR 478 (SC) and Garware Nylons Ltd. v. CCE . These judgements, he submits have been followed recently by the Tribunal in the case of CCE Vadodara v. Triveni Chemicals Ltd. reported in 1999 (33) RLT 800. On a query from the Bench he fairly concedes that this plea was not taken before the lower authorities but he submits that from the facts of this case, it is apparent that neither the department nor the importer was aware of the issue of the said Notification imposing anti-dumping duty on 14.11.1995.

3. Opposing the contentions, learned JDR, Shri Ravindra Babu submits that the new plea now taken by the learned advocate for the appellants should not be allowed at this stage because it is a plea of fact. He also submits that ignorance of law on the part of the appellants is not an excuse when Section 15(l)(b) states that rate of duty as applicable to the goods would be on the date of actual removal of the goods from the warehouse which rate will be applicable to the goods. It is not disputed, submits the learned JDR, that the notification imposing anti-dumping duty is dated 14.11.1995. Therefore, the duty has been correctly imposed. Learned JDR further submits that the appellants were fully aware about the

proceedings of anti-dumping going on in the Ministry of Commerce. As a result of the recommendation of Ministry of Commerce, this notification was issued by the Ministry of Finance in the Department of Revenue. Therefore, it cannot be stated, as has been done by the learned advocate for the appellants that they were not aware about the imposition of anti-dumping duty.

4. In his rejoinder, learned advocate Shri Jitinder Singh submits that the submission of the learned JDR regarding knowledge of imposition of antidumping duty is merely based on presumptions and surmises. There is no evidence whatsoever on record that the appellants herein were aware about the imposition of the said anti-dumping duty. Had it been so, he submits that the department would also be aware of it and they would have actually collected antidumping duty on the date of removal of the goods i.e. 16.11,1995 and there would have been no need to issue a separate demand on 12.4.1996 as had been done by the department in this case.

5. We have carefully considered the pleas advanced from both sides. We do not agree with the contention of the learned advocate for the appellants that rate of duty should be as on the date on which the goods were ordered to be cleared. On the basis of Apex Court's Judgment in the case of Union of India v. Apar Pvt. Ltd. reported in 1999 (33) RLT 787 : 1999 (84) ECR 63 (SC), the rate of duty on which the goods were actually removed from the warehouse would be applicable for the purpose of determining the quantum of duty. Accordingly, the rate of duty as available on 16.11.1995 would be applicable to the present goods. Subsequent question raised by the learned advocate that Notification 159/95 dated 14.11.1995 was brought to the notice of the public later on i.e. after 16.11.1995 and not on 14.11.1995 as is actually supposed to be done by the Revenue appears to have some force.

Since, however, this involves an enquiry into the facts and the plea was not taken before the lower authorities, we are of the view that the matter requires to be remanded to the adjudicating authority for bringing out the facts on record as to when the said Notification No.159/95 dated 14.11.1995 was brought to the notice of the general public. This exercise may be done by the adjudicating authority by

carrying out an enquiry from the concerned authority for issuing the notification i.e. the Government Press. The matter therefore, be readjudicated in the light of the aforesaid directions. In other words, he would have to ask as to when the Notification 159/95 dated 14.11.1995 was put on sale to public. In the light of the said enquiry this plea taken by the appellants before us be decided in the light of the Apex Court's Judgment in the case of New Tobacco Company, mentioned supra.

6. Appeal is allowed by remand. Dictated and pronounced in the open Court.

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