

Commissioner of Customs Vs. Jaln Irrigation Systems

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-12-1999

Reported in : (2000)(115)ELT770Tri(Mum.)bai

Appellant : Commissioner of Customs

Respondent : Jaln Irrigation Systems

Judgement :

1. The respondent to this appeal by the department, imported in November, 1995 part of machinery for production of plastic pipes. It filed bill of entry for warehousing the goods into its 100% export oriented units. The benefit of Notification 13/81, which permits import of such goods duty free by such units was claimed. The importer, however, did not clear the goods under this bill of entry, apparently for the reason that the permission of the Development Commissioner, Free Trade Zone, a prerequisite for availing of the notification had not been granted. The importer therefore made a request to the department for clearing the goods for home consumption and for conversion of the into-bond bill of entry into a bill of entry for home consumption. The permission was granted and the bill of entry for home consumption, which was filed two days later, was assessed to duty. The importer still did not clear the goods, which continue to lie in the custody of the port trust or its agent. In May, 1998 it made a request for permission to file an into-bond bill of entry, apparently because the Development Commissioner had now granted the permission subject to which the benefit of notification can be availed of. The Assistant Commissioner declined to permit the conversion of the home

consumption bill of entry into warehousing bill of entry. On appeal from this order the Commissioner (Appeals) took the view that appellant before him was eligible for the benefit of conversion. He took note of the fact it is engaged in export, which earns foreign exchange and that demurrage had been incurred on the goods. This order is challenged by the department in the appeal.

2. The Departmental Representative emphasises the grounds in the appeal that, by virtue of provisions of Sub-section (2) of Section 47 of the Act, interest accrued on the goods after seven days of the return of the bill of entry to the importer and this now amounts to Rs. 19 lakhs as much as or more than the duty on the goods. He says that Sub-section (5) of Section 46 of the Act permits conversion of an into-bond bill of entry into home consumption bill of entry or vice versa, if the interest of the revenue are not prejudicially affected and there is no fraudulent intention. Since the interest of the revenue to the effect of Rs. 19 lakhs the Assistant Commissioner is correct in denying the conversion. It is the contention of the Advocate for the respondent that the appeal does not refer to any loss of revenue. It only refers to the interest that could be lost. Since no duty is payable on goods, under Notification 13/81, no interest would be payable, and there is no loss of revenue. Interest in any case has to be distinguished from revenue. The intention initially was to use the goods in the 100% export oriented unit. It is only for want of permission of the Development Commissioner they could not be so used.

3. The appeal specifically mentions revenue as a factor. However, the question of interest will not arise unless there is revenue to be paid.

It is also not possible to agree that the provisions of Sub-section (5) of Section 46 will not be attracted if interest is involved, and not the duty involved. We are unable to see that interest on revenue payable is not, for the general purpose of the description, revenue. It may be true that there was initially an intention on the part of the importer to use the goods in the 100% export oriented unit. But the very fact that the importer following this took the decision to convert the bill of entry for home consumption shows that this intention ceased to exist. We are unable to appreciate how the inability to get the certificate from the Development

Commissioner prompted the importer to substitute a home consumption bill of entry for an into-bond bill of entry. If this had not been done, the goods still have been warehoused.

The question of applicability of notification would then come into the picture only when the goods were to be cleared from the bonded warehouse. This would have given the importer enough opportunity to obtain the permission from the Development Commissioner. It is therefore not possible to agree that the clearance sought for the home consumption was only because the importer could not utilise the goods stocked in bonded warehouse. The importer's contention suggest alternative. There is also no explanation forthcoming as to why the importer took 5 years to ask for the further change for home consumption. We are told by its Advocate that this is because the Development Commissioner was not inclined to issue the certificate required, because of a shortfall by the appellant in the export production, which later improved.

4. Neither this fact nor the claim made by the Advocate for the respondent that the import policy now permits import of these goods without any permission from the Development Commissioner, and consequently intent to avail of these notification, therefore, appear to us have any relevance to the issue. Sub-section (5) of Section 46 itself requires, before request for conversion of a home consumption bill of entry into a warehousing bill of entry or vis-a-vis is considered and that the interest of revenue are not prejudicially affected. We are unable to see how this requirement is offset merely because goods will be used for export promotion. The Commissioner has not considered this aspect and has only been persuaded by the claim that there has been demurrage incurred by the importer and the imported goods are to be utilised for export promotion. Export promotion is no doubt an activity that is to be encouraged, but that does not mean that everything else has to be sacrificed at the outset of export production. The demurrage incurred by the respondent is entirely as a result of its own acts or omission and no one else is responsible for it.

5. On consideration of these facts we are of the view that the Assistant Commissioner was correct in denying the request for conversion after submitting

the bill of entry. We, therefore, allow the appeal and set aside the order of the Commissioner (Appeals) and restore the Assistant Commissioner's order.

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