

Commandant Embarkation Vs. Collr. of Cus.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-16-2000

Reported in : (2000)(122)ELT532TriDel

Appellant : Commandant Embarkation

Respondent : Collr. of Cus.

Judgement :

1. In these two Appeals, filed by Commandant, Embarkation Headquarters, Bombay, the issue involved is whether the refund claims filed by them were hit by time limit specified in Section 27 of the Customs Act.

2. Shri V.S.R. Krishna, Learned Advocate submitted in Appeal No.C/257/94-B, the goods imported by them were assessed provisionally under the provisions of Section 18 of the Customs which is evident from the Bill of Entry No. 012398 of July 1989; that the B/E was finally assessed on 8-3-90 only; that the Department should have refunded the amount of duty paid in excess suo motu immediately after the finalisation of assessment; that no refund application is required to be preferred by the importer under Section 27 of the Customs Act; that this Section 27 does not come into picture at this stage, that it does so only if, even after adjustment of duty in terms of Section 18(2), the importer considers that a further amount is due to be refunded in which event he has to make a claim as enjoined in Section 27. He relied upon the decision in the case of Nagjee Purshottam and Co. Ltd. v. Collector of Customs, Bombay, - 1987 (13) ECR 351 (T). He further submitted that in view of specific provisions of Section 18 of the Customs Act and

the Tribunal's decision, it was not at all necessary for the importer to make a claim application for the refund of the excess duty which has been provisionally paid; that in any case the appellant had made repeated oral as well written requests right from the year of import for the refund of the excess duty paid.

3. In respect of Appeal No. C/258/94-B2, the learned Advocate submitted that B/E was provisionally assessed and duty was paid on 26-3-1991; that the B/E was finally assessed on production of documents and they paid differential duty under Challan No. 4400, dated 17-12-1991; that as per Explanation to Section 27, one year period has to be computed from the date of adjustment of duty after the final assessment thereof; that accordingly the refund claim filed on 11-12-1992 is not hit by time limit.

4. Countering the arguments, Shri Ashok Kumar, learned D.R., submitted that any refund of duty is made only under the provisions of Section 27 which requires that any person claiming refund of any duty may make an application for refund to the Assistant Collector of Customs; that as in Appeal C/257/94-B2, the duty was paid on 27-7-1989 and the refund was filed only on 22-10-1993, the same was clearly time barred as it was filed beyond the period of one year from the date of payment of duty; that even in case of provisional assessment, it is a prerequisite that a claim for refund of duty is filed otherwise the Explanation (1) to pre-amended Section 27 of the Customs Act providing for the computation of period in case of duty provisionally assessed would become redundant. He also mentioned that the Tribunal in the case of Nagjee Purshottam and Co. has not considered the effect of Explanation (1) to pre-amended Section 27 of the Act.

5. The learned D.R. further submitted that, in second appeal, as the duty was paid on 26-3-1991 and the refund claim was filed on 11-12-1992, the same is evidently beyond the period of one year and as such is hit by time limit. He also mentioned that in any case as the B/E was finally assessed in October 91, the period of one year has to be computed from that date and even then the refund filed on 11-12-1992 is beyond the time limit of one year as specified in Section 27 of the Act. He finally submitted that Apex Court has held in *Mafatlal Industries Ltd. v. Union of India*, 1997 (89) E.L.T. 247 (S.C.) that all claims for refund of Customs duty have

to be preferred and adjudicated only under the provisions of Section 27 of the Customs Act and as such both claims are hit by time limit.

6. We have considered the submissions of both the sides. As far as Appeal No. C/258/94-B2 is concerned, we observe that the Bill of Entry admittedly was finally assessed in October, 1991 and in pursuance of that the Appellant paid the differential duty. As the assessment was finalised in October 1991, the refund claim filed on 11-12-1992 is clearly time barred as it was filed after one year of the adjustment of the amount against the duty finally assessed. The appellant wants to read the provision as one year period will be computed from the date of payment of duty after duty has been finally assessed which is not warranted by the language of the provision. We therefore hold that refund of Customs duty is hit by time limit as far as claim of refund in Appeal C/258/94-B2 is concerned.

7. In respect of Appeal C/257/94-B2, we find that the issue is squarely covered by the decision in Nagjee Purshottam and Co's, case, supra, wherein it was held that Section 18 of the Customs Act, "enjoins that, on final assessment, the amount paid initially shall be adjusted against the duty finally assessed and the difference between the amounts of provisional duty and final duty shall be recovered from the importer or refunded to him, as the case may be.... It was the further duty of the proper officer to refund to the importer such amounts of duty as might have been found to have been collected in excess as a result of such final assessment. For this purpose, no refund application was required to be preferred by the importer under Section 8. We also observe that the Tribunal in this case also considered the effect of Section 27 as under : "This Section (27) does not come into the picture at this stage. It does so only if, even after adjustment of duty in terms of Section 18(2), the importer considers that a further amount is due to be refunded in which event he has to make a claim as enjoined in Section Accordingly there is no substance in the submission of the learned D.R. that the said Explanation was not considered in that decision.

Further the decision in the case of Alcatel Mode Net Works System v. C.C., New Delhi, 1999 (32) RLT 195 (CEGAT) was brought to our notice wherein the Tribunal held that "Refund of duty or recovery of duty as a result of the finalisation of

provisional assessment has to be given suo-motu by the concerned authorities. There is no limitation involved in either making recovery or giving refund as a result of finalisation of assessment." In view of these decisions, the refund claim in Appeal No. C/257/94-B2 is not hit by time limit.

9. Accordingly the appeal in C/257/94-B2 is allowed and the appeal in C/258/94-B2 is rejected.

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