

United and Clearing and Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-08-1985

Reported in : (1985)LC2472Tri(Mum.)bai

Judge : G Hegde

Appellant : United and Clearing and

Respondent : Collector of Customs

Judgement :

1. The revision application filed before the Government of India against the Order-in-Appeal bearing No. S/49-1287/81M dated 16.10.1981 passed by the Appellate Collector of Customs, Bombay, statutorily stood transferred to the Tribunal for being heard as an appeal.

2. The appellants claim for refund of duty on shortlanded goods were rejected as unsubstantiated by the Assistant Collector of Customs, MCD, for non-production of the necessary documents. On appeal, the Appellate Collector rejected the appeal holding that subsequent to their appeal, the appellants by their letter dated 17.9.1981 submitted that they had cleared one more case, but the shortlanding certificate remained for 3 cases. The subsequent claim is therefore, contradictory to the shortlanding certificate. The Appellate Collector further observed that the appellants admit that they were not having packing list showing the contents and value of the individual items.

3. In their revision application the appellants submitted that the packing list does not show the value and that in their letter dated 1.10.1981 they have intimated that the invoice shows the quantity and value separately for each case. They complained that the Appellate Authority had not considered that letter dt. 1.10.1981.

4. During the hearing of this appeal, Shri P.M. Thakur, Director for the appellants submitted that by clerical error they mentioned that they had received one case from out of the 3 cases specified in the Port Trust certificate. He submitted that his office copy contained the correct version. It was also submitted by Shri Thakur that the Port Trust would not deliver the subsequently traced case unless all the copies of the shortlanding certificate issued to them earlier are not returned. He maintained that 3 cases were shortlanded and the marking and numbers of the 3 cases were specified in the Bombay Port Trust certificate of shortlanding. Shri Thakur also produced for the perusal of the Bench the original of the invoice which indicate the value of each case separately. He, therefore, prayed that their appeal may be allowed and there may be an order for refund.

5. Shri J.M. Jain for the respondent Collector contended that the appellants had adopted a callous attitude. They have not cared to produce the documents which they were called upon to produce by the authorities below. They have even misled the authorities by making misleading statement in their letter dated 17.9.1981. Shri Jain urged that the orders passed by the authorities do not suffer from any infirmity and they do not require to be interfered with. It was also urged by Shri Jain that the records of the appellate authority do not contain the letter dt. 1.10.1981 said to have been sent by the appellants. He further submitted that the appellants have only forwarded photostat copies of the invoice and those photostat copies did not contain the particulars of the shortlanded package.

6. Considered the submissions made on both sides. The Bombay Port Trust is the custodian of the goods landed in the customs area. It has a statutory obligation to issue certificate as to the goods received. The certificate issued by the Bombay Port Trust shall have to be normally accepted; unless there are cogent reasons to reject. The only ground set out by the Appellate Collector for not placing any

reliance on this certificate was that the appellants in their letter dated 17.9.1981 have submitted that they had cleared one more case. Even if they had cleared one more case the Appellate Collector should not have rejected their claim in respect of the remaining two, nor can he ignore the Bombay Port Trust certificate in toto. It could have been opened to the Appellate Collector to direct the Port Trust to furnish the particulars of the cases landed or he could have given an opportunity to the appellants to get the certificate amended. Shri Thakur had submitted that if any case is traced after the certificate was issued, the Port Trust would not deliver it unless the certificates already issued are returned to them. This statement of Shri Thakur had not been controverted by Shri Jain. In the circumstances, I accept the contention of Shri Thakur that some incorrect statement had been made in their letter dated 17.9.1981 regarding the clearance of one shortlanded case. However, as the matter is being sent back, the Customs authorities would be at liberty to verify as to whether any of the cases which appear in the shortlanding certificate had been subsequently traced or delivered to the appellants. In his order the Appellate Collector has observed that the appellants had submitted that they are not having packing list showing the contents and value of individual items. The appellants maintained that the packing list do not contain the value. As observed earlier they have produced before me the original invoice which indicates the value case-wise. The order of the Appellate Collector does not indicate that they did not produce the copies of the invoice pertaining to the shortlanding goods. But as stated earlier Shri Jain has pointed out that the photostat copies produced by the appellants do not contain the particulars of the packages in respect of which refund is claimed.

7. It can be again said that the appellants had been callous in perusing their remedies. If they had taken proper care at proper time they could have saved the public time and expenses. But then that by itself cannot be a ground to reject the just claim of the appellants.

8, In the result, I allow the appeal and set aside the orders passed by the authorities below and remand the matter to the Assistant Collector, MCD, for consideration afresh in the light of the observations contained in this order. The appellants are directed to produce the original invoice in respect of the cases

which are shortlanded as per the certificate issued by the BPT. The Customs Authorities are at liberty to verify as to whether subsequent to the issue of the shortlanding certificate any of the cases had been traced and delivered to the appellants.

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