

Commissioner of Cus. Vs. Steel Complex Ltd.

Commissioner of Cus. Vs. Steel Complex Ltd.

SooperKanoon Citation : sooperkanoon.com/20348

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

Decided On : Jan-10-2001

Reported in : (2001)(74)ECC584

Appellant : Commissioner of Cus.

Respondent : Steel Complex Ltd.

Advocate for Def. : Shri. T. Ramesh

Judgement :

1. Both are Revenue appeals arising from the same order. The COD application pertains to a supplementary appeal and in terms of Tribunal's practice, the delay in filing the supplementary appeal by Revenue arising from same order is condoned.
2. The question that arises for consideration is as to whether the weighment slip issued by the Port Trust, Tuticorin was rightly accepted by the Commissioner (Appeals) for grant of refund in respect of duty of remission claimed by the respondents under Section 23 of the Customs Act. The Commissioner (Appeals) after due verification of all the material on record accepted the Port Trust certificate, certifying that certain quantity of imported goods have not been cleared by the appellants for home consumption as they were lost, pilfered or destroyed. He has also noted that those lost, pilfered or destroyed goods have not gone into home consumption and duty is to be remitted or if already paid to be refunded. He has also noted that question of unjust enrichment will not arise in as much as there is no opportunity of selling these non-existing goods. On that premise, he set aside

the AC's order holding that he was not satisfied with weighment certificate issued by a port trust as the Customs dept. was not associated with weighment or issue of said certificate.

3. Revenue in this appeal has reiterated the findings of the AC in rejecting the weighment certificate issued by the Port Trust as not relevant evidence and the plea raised is that the department has not been associated with such weighment and it cannot be accepted as an admissible evidence and an authentic record for assessing the shortage.

4. Ld. DR Shri S. Sudarsan pleaded for reversing the order of Commissioner (Appeals). He further produced a letter dated 21-12-2000 addressed to SDR by the Dy. Commissioner (Revenue), Tuticorin stating that they have ascertained from the Deputy Commissioner Customs House, Tuticorin that ever since the establishment of the Tuticorin Port as a major port in 1979 to toll date, the Tuticorin Port has not assumed the role and responsibilities as custodian of cargo handled by them in the port. Although a Notification No. 1 /95 (N.T.), dated 3-5-1995 was issued by the Trichy Commissioner-ate appointing Tuticorin Port Trust as custodian of cargo handled by them in terms of Section 45(1) of the Customs Act, 1962, Tuticorin Port Trust has always taken a stand that they do not invoke Section 42(2) of Major Port Trust Act, 1963, to undertake baileeship of the cargo handled in the Port, in view of the special system of labour organization in the port under Tuticorin stevedores association management which is a private body.

5. Ld. DR points out that AC was justified in rejecting the evidence of shortage certificate issued by the Port Trust, Tuticorin. He submits that Section 23 of the Act clearly indicates that evidence has to be the satisfaction of the AC thereby clearly implying that the AC or his staff has to be associated with the weighment and know about the shortage of landed goods. Therefore, the order of Commissioner (Appeals) accepting the Tuticorin certificate is not proper as per law.

6. On the other hand, Id. Advocate, Shri T. Ramesh appearing for the respondents submits that the issue is no longer res integra and this very Bench as far back in 1993 (65) E.L.T. 653 (T) in the case of Sonal Vyapar Ltd. v. CC has held that the certificate issued by the Madras Port Trust regarding shortage should be accepted

for remission of duty under Section 23 of the Customs Act. He submits that this judgment was subsequently followed in the case of East Coast Steels Ltd. - 1996 (14) RLT 468 and points out that the issue was further examined by the Bench comprising of then President and Member (T) in the case of Brindavan Alloys Ltd. -1998 (101) E.L.T. 279 and this very point raised has already been adverted to and rejected. It has been held that the AC ought to have verified the claim of the appellant against this "out turn report" or called upon the appellant to produce this report. He submits that Tribunal further observed that there is no reason why weighment certificate issued by port trust authorities cannot be accepted. He, therefore, submits that all these judgments were taken note of in appellant's own case by this Bench in Final Order No.756/99, dated 9-4-1999 in which case that time Id. DR then appearing had raised this objection and the Tribunal by a detailed order and on examining the provisions of Section 23 had rejected it and allowed the assessee's appeal and gave a direction for giving appellants the benefit available to them for remission of duty. He submits that all the points raised in this appeal have since been answered in their own case, the Tribunal has applied the ratios of the judgment of earlier judgments and hence there is nothing remaining now to further add to the law laid down and hence revenue appeals are required to be rejected.

7. On consideration of the submissions and examining all the judgments, we notice that the Tribunal in the case of Sonal Vyapar Ltd (supra) clearly held that the certificate issued by the Madras Port Trust indicating the short supply is required to be accepted granting remission of duty under Section 23 of the Act. The same was followed in East Coast Steels Ltd. (supra). The matter was further agitated by the Revenue in the case of Brindavan Alloys Ltd. (supra) wherein again the Bench comprising of the Hon'ble President and Member (T) re-examined the issue and rejected the Revenue's contention. Revenue again pressed the same in the respondent's appeal. The Tribunal after due consideration by this Bench did not find favour with the ground which has been agitated time and again and noted in all these judgments and allowed the present assessee's appeal. Therefore, the obsession on the part of the Revenue to keep pleading this point is not to the satisfaction of this Bench. Once the ratio has been laid down and law clarified, the revenue should agitate before the highest appellate forum. Same not

having been done, judicial discipline requires that Tribunal's judgment should be accepted and the same point should not be re-agitated again and again. Section 23 of the Customs Act clearly lays down that on such production of evidence to the satisfaction of the AC. Even as per the letter now produced from the Dy. Commissioner (Revenue), Tuticorin there is no denial of fact of issue of Notification No. 1/95 (NT), dated 3-5-1995 appointing the Tuticorin Port as custodian of cargo. Therefore, any certificate issued by Tuticorin Port which is incorporated under the Legislation can be considered as an appropriate evidence for due satisfaction of the AC under Section 23 of the Customs Act, 1962. All These points have been answered to by the Tribunal in the noted judgment and in that view of the matter, there is no merit in these appeals and same are rejected.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com