Super Fasteners Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-01-1985

Reported in : (1985)(22)ELT898TriDel

Appellant : Super Fasteners

Respondent : Collector of Customs

Judgement :
1. It is an application preferred under Rule 41 of Customs, Excise and Gold (Control) Appellate Tribunal (Procedure) Rvles, 1982. The prayer in the application is that pursuant to issue of our Order No. A.668/83, dated 27-12-1983 and keeping in view the fact that the consignment of the applicants incurred heavy demurrage due to inordinate delay in its clearance, we should issue directions to the Collector of Customs, Bombay to issue a 'Detention Certificate' in favour of the applicants.

Shri Harbans Singh, the learned counsel for the applicants submitted that the inordinate delay in the final clearance of the goods was largely due to wrong and arbitrary application of principles of valuation. Shri Singh further submitted that in terms of Rule 41 of CEGAT (Procedure) Rules, 1982, the Tribunal was competent to issue such directions. We put it to the learned counsel to show us the authority contained in the Customs Act, 1962, in terms of which our order dated 27-12-1983 was issued, that we have jurisdiction to issue directions to the lower authorities directing them to issue a Detention Certificate to the Bombay Port Trust authorities. The learned counsel submitted that he had not been able to find any provision in the Customs Act, 1962 empowering us to do so but maintained that we could exercise this power within the ambit of Rule 41 of CEGAT (Procedure) Rules, 1982. The learned counsel produced for our perusal 'Scale of Rates charged at the Docks, Approved by the Board of Trustees of the Port of Bombay' but was not in a position to show the Major Port Trusts Act, 1963, under the authority of which the above schedule of rates has been prescribed by the Bombay Port Trust authorities. Shri Singh prayed that the applicants had been granted refund of only l/3rd of charges paid by them and only issue of a 'Detentioa Certificate' by the lower authorities would entitle them to get the relief prayed for.

2. Shri Shishir Kumar, the learned S.D.R. for the respondent opposed the application on the ground that Bombay Port Trust is an autonomous body and that issue of Detention Certificates was not in terms of any provisions of the Customs Act, 1962. He also submitted that by our order dated 27-12-1983, we had not completely absolved the applicants from violation of I.T.C. restrictions. We had merely taken a lenient view of the said contravention and reduced the fine from Rs. 2 lakh to Rs. 25,000/-.

3. We have carefully considered the matter. We have also referred to the provisions of the Customs Act, 1962 and the Major Port Trusts Act, 1963, particularly Sections 48 to 52 thereof. The main point that arises for our consideration is whether an order refusing to issue a Detention Certificate on the part of the Collector of Customs or his subordinate officers (if so authorised) is a decision or order under the Customs Act, 1962. After a careful study of the two Acts, referred to above, we find that an order with regard to issue of Detention Certificates is purely a procedural administrative decision which is not governed by any provisions of the Customs Act, 1962. We observe that in terms of Sections 48 to 52 of the Major Port Trusts Act, 1963, Bombay Port Trust have laid down in Section III (Rents) of the Scale of Rates, the conditions under which a Detention Certificate, if issued by the Customs Department, is entitled for exemption from demurrage charges. The relevant extracts are reproduced below : "(d) Goods detained by the Customs Department for special examination 'involving analytical or technical tests other than the ordinary processes of appraisement' will be exempt from demurrage fees during such period of detention as may be certified by the Collector of Customs to be not attributable to fault or negligence on the part

of importers or exporters plus two working days.

Certification by the Customs will be given by endorsement on relative duplicate copies of Bills of Entry or Shipping Bills." We have also referred to the report of the Collector of Customs, Bombay as furnished by the learned SDR on 2-3-1984. From the Report it is quite clear that the procedure to issue Detention Certificates is based on an understanding between the Ministries which exercise administrative control over the Customs Department and the Major Port Trusts (including Bombay Pot Trust), namely, Ministry of Finance and the Ministry of Shipping and Transport respectively. As per the Report of the Collector, "detention certificates can be issued in cases (i) where the goods are detained by the Customs Department for special examination involving analytical or technical test other than ordinary process of appraisement; and (ii) where the goods are detained for bona fide Import Trade Control formalities without any default on the part of the importer". It is also on record that "in respect of detention on other grounds, no regular detention certificate can be issued". It has also been stated in the Report that "the existing guidelines do not permit issue of detention certificates where the goods are imported in contravention of I.T.C. Regulations and are released on payment of fine". Thus, any decision allowing or rejecting the issue of Detention Certificate is not an order or decision under the Customs Act, 1962. We are dealing here with a case where the prayer for issue of Detention Certificate is in the context of an Order issued by us. There can also be instances where disputes can arise directly between importers/exporters and the Port Trust authorities with regard to the quantum of demurrage charges leviable. Obviously, in such cases we do not come into the picture at all. From the Collector's Report, we observe that in exceptional cases i.e. those not covered by the abovementioned provisions, the Collector can send a recommendatory letter to the Port Trust authorities for grant of suitable relief in respect of demurrage charges. As the applicants were not to- tally acquitted of the charge of violation of 1TC Regulations, their case is clearly not covered by the provisions governing the issue of Detention Certificates. Accordingly, we find from the record that grant of l/3rd remission of demurrage charges to the applicants was as a result of a special recommendatory letter issued by the Collector of Customs, Bombay. In any case, the applicants case is not one where Detention Certificate per se could have been issued by the Collector in the light of our Order and the guidelines agreed to between the Customs Authorities and the Bombay Port Trust authorities.

4. The learned counsel for the applicants has contended that the ambit of Rule 41 is wide enough to empower the Tribunal to issue directions to the Collector to issue the said Detention Certificate. As mentioned earlier, there is no provision in the Customs Act, 1962 which authorises us to do so. Certainly, the powers contained in a Rule cannot be in conflict with or be wider than the powers contained in the Statute itself. What is not covered by the Statute cannot obviously be covered by the Rules made under it. In this view of the matter also, we reject the contention of the learned counsel.

5. The learned counsel also invited our attention to a judgment of the Madras High Court, 1980 E.L.T. 128 (National Industries v. Assistant Collector of Customs, Madras) wherein the Hon'ble Court had directed the Collector of Customs to issue a Detention Certificate in favour of the importers. In this connection we have referred to the said judgment. We observe that the facts in that case were different from the ones in the applicants' case. Further, and what is really more important, is that the orders of the Hon'ble High Court were in exercise of their Writ jurisdiction. The powers of the Hon'ble Supreme Court and the High Courts in their writ jurisdiction are very wide and large in their scope and ambit. The Tribunal does not have such powers and has to operate within the jurisdiction conferred on it by the 3 Enactments, namely, Customs Act, 1962, Central Excises and Salt Act, 1944 and Gold (Control) Act, 1968.

6. We, therefore, hold that a decision with regard to issue of Detention Certificates by the Customs authorities is not a decision or order pursuant to any provision of the Customs Act, 1962. As this Tribunal derives its appellate powers, in customs matters, from Customs Act, 1962 and since the said Act does not have any provision with regard to issue of Detention Certificates, we are of the considered view that matters pertaining to Detention Certificates fall outside the jurisdiction of this Tribunal.

7. In the result, we see no merit in this application and reject the same.