

Jayashree Textiles and Vs. Collector of Customs

Jayashree Textiles and Vs. Collector of Customs

SooperKanoon Citation : sooperkanoon.com/2346

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-05-1985

Reported in : (1985)(5)LC2468Tri(Delhi)

Appellant : Jayashree Textiles and

Respondent : Collector of Customs

Advocate for Pet/Ap. : Shri. N.C. Sogani

Judgement :

1. The proceedings, culminating in the impugned order of the Collector (Appeals), Calcutta, emanated from two notices of short-levy demand, having been issued upon the appellants herein, covering two imports made by separate Bills of Entry. The first notice, bearing the date 12-6-1981, was in relation to the goods cleared by Bill of Entry No.1-752 dated 15-12-1980; whereas the second notice, issued on 3-11-1981, was in respect to goods covered by Bill of Entry No. 1-404 dated 10-9-1979. Both the consignments had been cleared initially, after assessment of duty at the rate of 40% plus 5% in terms of Notification No. 154/79-Cus., dated 4-7-1979, on the basis of declaration of the goods as : 'Raw wool from other animal hair'. The Department subsequently came to entertain the view that these goods were classifiable under heading 53.01/05(1) of the Customs Tariff Act, 1975, and as such, not entitled to the benefit of Exemption Notification No.154/79.

2. It appears that, in the first instance, demand was made in relation to the later Bill of Entry, and after the appellants while filing reply to the said show cause

notice, submitted by way of evidence of the departmental practice, earlier Bill of Entry of 1979; the second notice pertaining to that was also issued. The notices having been contested, were first adjudicated by the Assistant Collector of Customs who held that sub-heading No. (2) of heading No. 53.01/05 of the C.T.A. covered only 'wool raw and wool tops' ; by which one understood fine hair such as from the Alpacen sheep and goats, and that the subject-goods, being of the nature of 'Kid Mohair Wool' which was from the hair of Angora Goat, could not be treated within the category of 'wool' as contemplated by T.I. 53.01/05(2) and would, on the other hand, be classifiable under sub-heading (1) of the same entry, to which goods the Exemption Notification No. 154/79 did not extend.

3. The Collector (Appeals) confirmed the view taken by the Assistant Collector, and dismissed the appeal filed before him.

4. In the present appeal, filed before the Tribunal under Section 129A (1) of the Customs Act, 1962 (hereinafter referred to as Act), the appellants while reiterating their plea on facts as to the nature of the imported goods, and the real scope of the term 'wool' etc., have, at the outset, taken up the objection as to the notices of demand being barred by time, having been served beyond normal time limit of six months, as permissible under Section 28 of the Act. They plead that they had imported two consignments of 'Scoured Kid Mohair Wool', and had amplified in the Bills of Entry that the goods were 'Raw wool from other animal hair' which declaration was accepted when the goods were cleared from Customs custody and duty paid accordingly and, as such, there was no mis-declaration or suppression of facts, and no justification for applying the extended period of limitation.

5. When the appeal was taken up for hearing on earlier occasions, Shri N.C. Sogani invited attention of the Bench to this contention of the appellants as to both the notices being barred by time. In regard to the objection taken by the S.D.R.- Shri K. Chandramouli at the time-that this point, having not been urged before either of the lower authorities, could not now be permitted to be argued, the Bench observed during the hearing held on 19-6-1985 that the appellants having placed before us whatever evidence in this respect was available with them, it was

considered expedient in the interest of justice, to permit the appellants to raise this point. Of course, the respondent was given opportunity to rebut the same if he could.⁶ It is to be noted that so far as the second notice is concerned, it is 'on the face of it, much beyond the period of six months from the date of payment of duty; but the first notice, having been issued in the month of June 1981 in relation to the clearance effected on 15-12-1980, the dates of this notice were very pertinent, and the controversy, so far as the facts are concerned, was confined to the first notice. The respondent, on the adjourned hearing through the learned SDR, has placed a copy of entries from the record of despatch of registered letters, which shows that one registered letter was sent to M/s. Jayashree Textiles-the appellants herein-on 15-6-1981. On the earlier occasion, Shri N.C. Sogani had filed an extract from the appellants' receipt diary for 18-6-1981 which indicates that a letter, with particulars corresponding to the show cause notice dated 12-6-1981, was received by the appellants on 18-6-1981. He also produced, in original, a receipt diary of the appellants.

7. At the time of hearing of the appeal, the Bench thought it expedient first to give hearing only on the preliminary issue as to limitation vis-a-vis service of show cause notices. Shri N.C. Sogani appearing for the appellants, after briefly indicating the dates of Bills of Entry and payment of duty, and the dates of the corresponding show cause notices, argued that, so far as the second notice is concerned, there is a time gap of more than two years between the date of assessment and payment of duty, and the notice ; and even for the first notice, on respondent's own showing, the date of despatch of the registered notice from the office is 15-6-1981. He contended that the appellants while filing the Bill of Entry, had given all the necessary particulars of the consignments, and there was no suppression or mis-statement of facts and, consequently, there was no justification in invoking the extended period of limitation, and that the time available will be the normal limit, provided by Section 28(1) of the Act; and that, on this criterion, both the notices are clearly barred by time.

8. Shri Vineet Ohri, learned representative of the respondent, while replying, again raised the objection that the point of limitation, which had not been urged at lower stages, could not be allowed to be raised at this stage, but his attention was drawn

to the earlier decision of the Bench to permit this point to be argued, being a point of law; particularly when now both the parties have placed on our record evidence/material having a bearing on this issue. He then, very fairly, conceded that, in view of the fact that the Assistant Collector in his order has not imposed any penalty, it can safely be conceded that there is no charge of suppression or mis-statement of facts and, thus, he was not contending that extended period of limitation is available in this case. He, thus, straightway admitted that, so far as the second notice, issued on 3-11-1981 in relation to Bill of Entry No. 1-404 dated 10-9-1979, is concerned, that is manifestly barred by time. However, on the first notice, he contended that it having been issued on 15-6-1981, in relation to payment of duty vide Bill of Entry cleared on 15-12-1980, this notice was within six months, and cannot be held to be barred by time.

9. In a short re-joinder, Shri Sogani reiterated that the notice, issued on 15-6-1981, was received-as the appellants have shown from their record -on 18-6-1981, and that has to be treated to be the date of service of notice and, on that reckoning, the notice was served on the appellants after expiry of six months from the date of payment of duty and is, thus, barred by time. He argued that the law also contemplated actual service of notice and made reference, in this regard, to Section 27 of the General Clauses Act, laying stress on the fact that, in terms of its provisions, service of a letter, sent by registered post, is deemed to have been effected, in the absence of any proof to the contrary, 'at the time at which the letter would be delivered in the ordinary course of post'.

10. He contended that, thus, the stress in law is on 'delivery of the post', and not on the 'despatch', and that delivery in this case being after six months; notice-though dated 12-6-1981 and issued on 15-6-1981-can be treated to have been served only on 18-6-1981.

11. We have given our careful consideration to the respective contentions cavassed in this regard. We consider it expedient to reproduce the relevant provisions of Section 28(1) of the Act for facility of reference and appreciation :-
"28. Notice for payment of duties not levied, short-levied or erroneously refunded.-
(1) When any duty has not been levied or has been short-levied or erroneously

refunded, the proper officer may,- (a) in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, within one year ; (b) in any other case, within six months, from the relevant date, serve notice on the person chargeable with the duty (emphasis supplied) which has not been levied or which has been so short-levied or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice." 12. A plain reading of the relevant provisions thus makes it clear that what is required to be accomplished within six months is not the 'issue' of notice but 'service' of the notice on the person concerned.

Apart from the fact that General Clauses Act, as high-lighted by Shri Sogani, also lays down the principle that the delivery of a registered post is to be taken to have been effective when it can reach the addressee in the ordinary course, and that the notice sent on 15-6-1981 could not have, in any case, reached the addressee : (the appellants in this case) the same day, there is evidence placed on record by the appellants, about which the Bench has satisfied itself that it is relatable to the notice under reference, that it was actually received on 18-6-1981.

13. In view of the plain provisions of Section 28(1) as noticed above, and in view of the accepted principle that the Post Office is treated as an agent of the sender, the date of mere handing over of the registered letter, containing notice, to the Post Office would not be relevant but the date on which it is served on the addressee. In this view of the matter, the receipt of notice, being on 18-6-1981, is clearly after expiry of six months from the date of payment of duty, and even this notice, in relation to first Bill of Entry, has to be taken as barred by time.

14. In the view we are taking; namely, both the demands being liable to be struck down for reasons of show cause notices having been issued beyond the permitted time-limit, we do not consider it necessary to go into other questions raised in the appeal.

15. We accordingly allow the appeal on the basis of notices being barred by time.