Collector of Customs Vs. Ramesh Enterprises (Pvt) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-19-1986

Reported in : (1987)(11)ECC207

Appellant : Collector of Customs

Respondent : Ramesh Enterprises (Pvt) Ltd.

Judgement :

1. M/s. Ramesh Enterprises (P) Ltd. presented a shipping bill on 16.6.1981 for export of 417 bags of coffee to U.S.A. by vessel "President Eisenhower". It was assessed to duty and cess at the rates prevalent on that date. On 19.6.1981 the name of the vessel in the shipping bill was amended to "M.V. President Wilson". Duty was paid and shipment was affected. On 10.7.1981 the respondents preferred a refund claim on the ground that export duty on coffee was withdrawn from 19.6.1981 and that entry outwards to M.V. President Wilson was granted on 10.6.1981. The refund claim was rejected by the Assistant Collector under order dated 18.8.1981. The appeal against the same was allowed by the Appellate Collector under order dated 19.2.1982. It is against the said order that this appeal has been preferred by the Collector of Customs, Madras.

2. We have heard Shri G.V. Naik, Jt. C.D.R. for the appellant Collector and Shri K.R. Shanmugha Sundaram, Consultant for the respondents.

3. The ground stated in the appeal, to contend that the order of the Appellate Collector is wrong, is that the provisions of section 16(1) of the Customs Act would

apply only in cases of shipping bills where no amendments are carried out and that they would not apply where the name of the vessel is amended subsequently. In this case the shipping bill was presented on 16.6.1981 mentioning the name of the vessel M.V.President Eisenhower but the name of the vessel was later amended to M.V. President Wilson, through which admittedly the export finally took place. Entry outwards for the said vessel was granted on 10.6.1981.

Under Section 16 of the Act the rate of duty shall be the rate as on the date on which the shipping bill is presented, subject to the proviso that if the shipping bill had been presented before the date of entry outwards of the vessel by which the goods are to be exported the shipping bill shall be deemed to have been presented on the date of such entry outwards. In the present instance the shipping bill had been presented on 16.6.1981 which is subsequent to 10.6.1981 the date on which the entry outwards for the vessel M.V. President Wilson, through which the export admittedly took place, was granted. The contention in the appeal is that the provisions of section 16 would apply only with reference to the shipping bill as it was originally presented but not when an amendment is granted in the shipping bill with reference to the name of the vessel. We are unable to appreciate this argument. If an amendment of the nature mentioned above is applied for, it is open to the authorities either to grant the amendment or direct that the original shipping bill may be withdrawn and a fresh shipping bill (with the name of the vessel through which the export is to take place) be presented. If the authorities had directed the respondents to file a fresh shipping bill with the name of M.V. President Wilson, the same would have been presented on 19.6.1981. That would be subsequent to the date of entry outwards for that vessel (10.6.1981) and therefore under section 16 the rate of duty would have been as on 19.6.1981 i.e. nil rate of duty. The fact that the authorities did not insist on this procedure, but permitted an amendment to take place, should not lead to any different conclusion as to the applicability of section 16 to the amended shipping bill.

4. In the above view we hold that the order of the Appellate Collector directing refund as applied for is correct. Upholding the said order we dismiss this appeal.