

Commissioner of Customs Vs. Pacific Export

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-07-2003

Reported in : (2003)(156)ELT531Tri(Mum.)bai

Judge : K Kumar, S T C.

Appellant : Commissioner of Customs

Respondent : Pacific Export

Advocate for Def. : Shri. Naresh Thakkar

Judgement :

1. This is an appeal filed by Revenue against the impugned Order-in-Appeal passed by the Commissioner of Customs (Appeals) in which she has recorded as follows :- "On going through the facts of the case I hold that the present case is covered by Section 61 of the Customs Act, as amended with effect from 13-5-1994. Duty is payable at the rate in force on the date of actual removal and interest is payable on such duty. Section 61(2) covers this case squarely.

In view of above impugned order is set aside with consequential benefit to the appellants.

Shri S.S. Bhagat, learned S.D.R. appearing for the Revenue states that in the case of clearance from a warehouse relating to time expired bond cases, the duty has to be charged at the rate prevailing on the date of expiry of the bond as has been held by the Apex Court in the case of Kesoram Rayon v. Collector of

Customs, Calcutta - 1996 (86) E.L.T. 464 (S.C.). As such, he argues. Commissioner (Appeals) is wrong in holding in her order that the duty is payable at the rate in force on the date of actual removal.

2. Shri Naresh Thakkar, learned Counsel for the respondents states that Section 61 of the Customs Act, 1962 has been amended and therefore the ratio of the aforesaid Supreme Court decision can not be applied after such amendment.

3. We have heard rival submissions, perused the case records and case laws cited before us. In the instant case, the appellants have imported a consignment of "Ethyl Venillin" which was warehoused against Bond No.CW-20-2579, dated 28-8-1995. They filed ex-bond bill of entry for clearance of the goods after expiry of the bond period on 27-8-1996.

They were asked to pay duty at the rate applicable on 27-8-1996 and also interest on the said duty. The appellant's claim that Section 61 of the Customs Act, 1962 has been amended w.e.f. 13-5-1994 and therefore they are required to pay duty at the rate payable on the date of actual removal from the warehouse which was admittedly after expiry of the bond period.

4. In the case of Kesoram Rayon cited above, the Apex Court has categorically held as follows :- "10. Section 61 prescribes the period for which goods may be warehoused. They may be left in the warehouse in which they are deposited for the period of one year if they are such goods as are referred to in Clause (a) of Sub-section (1), and for the period of three months counted from the date of the order permitting warehousing if they are not such goods. The first proviso to Sub-section (1) contemplates the reduction of the periods aforementioned, of one year and three months respectively (now referred to as "the permitted period"), if the goods are likely to deteriorate. It also permits, if the goods are not likely to deteriorate, an extension of the permitted periods on sufficient cause being shown; the Collector of Customs can extend the permitted periods by six months and the Central Board of Excise and Customs can do so for as long as it deems fit. By reason of Sub-section (2), interest is payable on the amount of duty on the warehoused goods for the period from the expiry of the permitted periods till the date of their clearance from the warehouse, regardless of whether the goods have

remained in the warehouse beyond the permitted periods by reason of extension of such periods or otherwise.

11. Put briefly, so far as it is relevant for our purpose, warehousing is permissible for only a stated period; the period is extendible if cause for doing so is shown; and, whether or not the permissible period has been extended, interest on the amount of duty on the warehoused goods is payable for the period subsequent to the permissible period up to their clearance.

12. Section 72, deals with goods improperly removed from a warehouse. Goods are improperly removed from a warehouse under the terms of Sub-section (1) if they are removed without clearance under Section 71 [Clause (a)]; if they are taken as samples but without payment of duty [Clause (c)]; if a warehousing bond has been executed in respect of the goods under Section 59 but they are not satisfactorily accounted for [Clause (d)]; and if they have not been removed from the warehouse on the expiration of the permitted period or its permitted extension [Clause (b)]. In all such cases the Customs Officer is empowered to demand, and the importer shall pay, the full amount of duty chargeable on the goods and interest, penalties, rent and other charges thereon. If payment as demanded is not made, it is recoverable by sale of other goods of the importer in the warehouse.

13. Goods which are not removed from a warehouse within the permissible period are treated as goods improperly removed from the warehouse. Such improper removal takes place when the goods remain in the warehouse beyond the permitted period or its permitted extension. The importer of the goods may be called upon to pay Customs duty on them and, necessarily, it would be payable at the rate applicable on the date of their deemed removal from the warehouse, that is, the date on which the permitted period or its permitted extension came to an end.

14. Section 15(1)(b) applies to the case of goods cleared under Section 68 from a warehouse upon presentation of a bill of entry for home consumption; payment of duty, interest, penalty, rent and other charges and an order for home clearance. The provisions of Section 68 and consequently, of Section 15(1)(b) apply only when goods have been cleared from the warehouse within the permitted period or

its permitted extension and not when, by reason of their remaining in the warehouse beyond the permitted period or its permitted extension, the goods have been deemed to have been improperly removed from the warehouse under Section 72.D.C.M. and Anr. v. Union of India and Anr. cited by learned Counsel for the appellants dealt with, and upheld, the constitutionality of Section 15(1)(b). It did not deal with a situation where goods continued to remain in a bonded warehouse beyond the permitted period. It does not assist the appellant's case.

16. The permitted period for warehousing the said bales came to an end on 15th September, 1984, but the said bales remained in the bonded warehouse thereafter. The said bales, by reason of the provisions of Section 72, were deemed to have been improperly removed from the bonded warehouse on that day and subject to duty at the rate then in force. The demand notice dated 8th May, 1985, called upon the appellants to pay such duty. The order dated 25th June, 1985, pertaining to the appellants' private bonded warehouse, rightly made it clear that the said bales had not been cleared therefrom on an ex-bond bill of entry under Section 68 but under Section 72. While the appellants may have filed an ex-bond bill of entry pertaining to the said bales on 30th May, 1985, there is nothing on record that suggests that clearance thereon under Section 68 was ordered. Section 15(1)(b) has, therefore, no application.

17. The consequence of non-removal of warehoused goods within the permitted period or the permitted extension is, by virtue of the terms of Section 72, certain. The date on which it comes to end is the date relevant for determining the rate of duty." 5. It is clear from the Apex Court's order extracted above that in respect of warehoused goods which remain in the bonded warehouse beyond the permitted period after expiry of the warehousing bond, the same have to be treated as improperly removed from the warehouse and the duty would be payable at the rate applicable on the date of their deemed removal from the warehouse, that is, the date on which the permitted period comes to an end.

6. It is now to be seen whether the amendment made in 1994 to Section 61 makes the aforesaid decision of the Apex Court inapplicable as contended by the learned Counsel for the appellants. We find that the opening paragraph of Section 61(2)

which was considered by the Apex Court and was extracted in its order is as under :- "Where any warehoused goods remain in a warehouse beyond the period of one year or three months specified in Clause (a) or Clause (b) of Sub-section (1) by reason of the extension of the aforesaid period or otherwise, interest at such rate, not exceeding eighteen percent per annum as is for the time being fixed by the Board, shall be payable on the amount of duty on the warehoused goods for the period from the expiry of the period of one year or, as the case may be, three months, till the date of the clearance of the goods from the warehouse." After the amendment made in 1994, the opening paragraph of the said Section 61(2) reads as follows :- "Where any warehoused goods remain in a warehouse beyond the periods specified in Sub-section (1) by reason of extension of the aforesaid period or otherwise, interest at such rate as is specified in Section 47 shall be payable, on the amount of duty payable at the time of clearance of the goods in accordance with the provisions of Section 15 on the warehoused goods, for the period from the expiry of the said warehousing period till the date of payment of duty on the warehoused goods." 7. We find that the aforesaid provisions under Section 61(2) deals with the payment of interest. Before the change in 1994, it requires payment of interest at such rate, not exceeding 18% per annum as is for the time being fixed by the Board on the amount of duty on the warehoused goods. After the change in 1994, it requires payment of interest as specified in Section 47 on the amount of duty payable at the time of clearance of goods in accordance with provisions of Section 15 on the warehoused goods. Both the provisions relate to payment of interest and the interest is related to the duty payable. Earlier the rate of interest was to be fixed by the Board and after 1994 the rate of interest was to be as specified under Section 47. This is the principal difference that the amendment brought about in the rate of interest. It is only incidental that it earlier referred to the amount of duty on the warehoused goods and after the amendment it refers to the amount of duty payable at the time of clearance of the goods in accordance with the provisions of Section 15. It has to be kept in mind that Sub-section (1) of Section 61 deals with period for which goods remain in warehouse and subsection 2 of Section 61 requires interest to be paid if the goods remain in the warehouse beyond the period specified in Sub-section (1) of Section 61 for reason of extension or otherwise.

This sub-section does not deal with the rate of duty per se. Section 15 on the other hand deals with date for determination of rate of duty. It categorically states that for goods cleared from a warehouse, the rate of duty shall be the rate in force on the date on which the goods are actually removed from the warehouse. This provision has not undergone any change in 1994. In the case of warehoused goods which is cleared within the warehousing period or extended period, the rate of duty would be as on the date of actual removal. However, when the bond expires and goods remain in the warehouse, the Apex Court decision cited above is categorical that in such cases the goods are to be deemed to have been improperly removed from the warehouse and that the duty would be payable at the rate applicable on the date of their deemed removal from the warehouse, that is, the date on which the permitted period or its permitted extension comes to an end.

8. We are unable to find any merit in the contention of the learned Advocate for the respondents that the amendment made in 1994 in the provisions relating to the rate of interest would alter the law laid down by the Apex Court in regard to the rate of duty for goods which remain in the warehouse after expiry of the bond merely because of the reference to Section 15 in the amended provisions after 1994. It is specified in Section 61(2) that the provision relating to interest applies when the goods remain in the warehouse beyond the period mentioned in Section 61(1). It makes no difference that Section 15 was not referred to in Section 61(2) prior to 1994 and it has been specifically referred to after 1994. Section 15 is the appropriate provision that decides what would be the date for determination of the rate of duty and in the case of warehoused goods it is the date of actual removal in terms of the said Section 15. However, in a case where the goods remain in the warehouse beyond the period of warehousing or extended period of warehousing after expiry of the warehousing bond, the date of removal is to be deemed to be the date on which the permitted period or its permitted extension comes to an end as held by the Apex Court. Therefore, there cannot be any doubt that in such cases, the rate of duty under Section 15 would be as applicable on such deemed date of removal.

9. In view of the above, we are of the opinion that the Commissioner (Appeals), who has passed a cryptic two line order without going through the Apex Court's

order which was relied on by the Assistant Commissioner, is wrong in her determination that duty is payable at the rate in force on the date of actual removal under Section 61(2).

Accordingly, we set aside the impugned Order-in-Appeal and restore the direction of the Assistant Commissioner that the duty is payable at the rate in force on the date on which the warehousing period came to an end. Interest is also payable on such duty in accordance with law.

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