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Court : Mumbai

Decided On : Sep-25-1981

Reported in : 1981(8)ELT918(Bom)

Judge : M.L. Pendse, J.

Acts : Customs Act, 1962 - Sections 116; Constitution of India - Article 226

Appeal No. : Miscellaneous Petition No. 698 of 1978

Appellant : Hellenic Lines Ltd. and Another

Respondent : Union of India

Judgement :

1. The 1st petitioners are a Foreign Company and owners of a steamship known as 's.s. Helenic Ideal', while the 2nd petitioners are the Bombay Agents of the 1st petitioners.

2. The steamer s.s. Helenic Ideal arrived in Port of Bombay in about November 1972 loaded with bales of rags and garments. The imported bales of rags and garments were governed by IGM No. 818 dated November 18, 1972 and they were covered by Item Nos. 50, 89, 91, 27, 28 and 26. The petitioners had landed the entire cargo at the Bombay Port Trust Docks but about 48 bales were in loose condition, while the remaining 572 bales were landed in sound condition. The Port Trust authorities had issued out-turn report which erroneously stated that there

were short landing of certain goods by the petitioners. The short landing certificate was issued on November 16, 1972.

3. On November 24, 1975, the petitioners were served with the show cause notice by the Assistant Collector of Customs (Manifest Clearance Department) in exercise of the powers under Section 116 of the Customs Act to show cause why penalty should not be imposed for violation of Section 116 of the Customs Act. The petitioners replied on December 1975, but the Assistant Collector in Customs by his order dated February 10, 1976 imposed a penalty of Rs. 7,957 in respect of Item Nos. 50, 89, 91, 27 and 28 and the Deputy Collector of Customs by his order February 11, 1976 imposed a penalty of Rs. 25,522.50 in respect of Item No. 26. The Assistant Collector held that the claim of the petitioners that the short landed goods were landed in loose condition was not supported by any documentary evidence.

4. The petitioners thereafter addressed a letter to the Bombay Port Trust on September 7, 1976 and pointed out that there are several bales lying unconnected and loose against this vessel and the Port Trust authorities should connect those bales in adjustment to the vessel's requirement and issue an amended out-turn report deleting the shortage. Accordingly, the Port Trust authorities issued an amended out-turn report on September 29, 1976 and the amended report clearly establishes that there was no short landing whatsoever.

5. The petitioners thereafter addressed a letter to the Assistant Collector of Customs on October 1, 1976 requesting that in view of the amended report, the penalty imposed should be revoked but having failed to receive any satisfactory reply, preferred an appeal against the imposition of penalty on October 25, 1976 before the Appellate Collector of Customs, Bombay. The appeal was dismissed on the ground that it was time-barred and the order of the Appellate Collector dated October 30, 1976 was confirmed in revision preferred by the petitioners before the Government of India. The revisional order was passed on February 5, 1977 and these orders are under challenge in this petition filed under Article 226 of the Constitution of India.

6. Shri Dalal, the learned counsel appearing in support of the petition, very rightly contended that in view of the amended out-turn report issued by the Bombay Port Trust on September 29, 1976, the two orders of penalty imposed by the Assistant Collector of Customs cannot be stand. Shri Sethna, the learned counsel appearing on behalf of the Department, very rightly did not challenged this contention but urged that the petitioners ought to have produced the amended out-turn report before the Assistant Collector and appellate authority was justified in disposing of the appeal as it was filed beyond period of limitation. In my judgment, the submission is totally misconceived. If there was no short landing of goods, then the Assistant Collector of Customs had no jurisdiction to impose the penalty and the orders are without any jurisdiction. The Appellate Collector was clearly in error in taking a technical view and dismissing the appeal on the ground of limitation. The orders under challenge, in these circumstances, cannot be sustained and the petition must succeed.

7. Accordingly, the rule is made absolute and the orders passed by the Assistant Collector on February 11, 1976 and that by the Appellate Collector on October 30, 1976 and by the Revisional authority dated February 5, 1977 are set aside. As the petitioners have already paid the amount of penalty, the respondent are bound to refund the same. The respondents shall refund the amount within a period of four weeks from today. The respondents shall pay the costs of the petition.