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Siraj Sons Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-18-1987

Reported in : (1988)(35)ELT597Tri(Mum.)bai

Appellant : Siraj Sons

Respondent : Collector of Central Excise

Judgement :
1. This is a Revision Petition dated 30-5-1980 under old Section 36 of the Central Excises and Salt Act, 1944 filed by M/s. Siraj Sons to the Government which has been transferred to the Tribunal in terms of Section 35P and is to be treated as an appeal to the Tribunal. The appeal is against the Collector's order No. V/29 (Section 14) Siraj/76 dated 24-3-1979 as confirmed by the Board's order No. 219/1979 under F.No.l94/178/79-AU(A) dated 13-12-1979, under which the Collector demanded duty amounting to Rs.2,09,703.66 on 45 AR 4(s) forms for export of fabrics in bond under Rule 14 of the Central Excise Rules, 1944, but which could not be exported by the appellants. The brief facts of the case are that the appellants cleared 603 bales of cotton fabrics under 45 AR 4(s) forms after executing a general bond for export without payment of central excise duty. The stipulated period for export was six months from the date of clearance of the fabrics from the various manufacturing mills. However, these fabrics caught fire while stored in the godown of C.H.A. M/s. Tulsidas Khimji Pvt.

Ltd. on 24/25-5-1975. These bales could not therefore be exported. The fact of the bales perishing in fire was reported by M/s. Siraj Sons to the Asst. Collector of

Central Excise in their letter dated 26-5-1975.

But the Asstt. Collector raised 19 demands for central excise duty aggregating to Rs. 2,09,880.28 under Rule 14-A of the Central Excise Rules, 1.944 except for duty amounting to Rs. 176.62 on one bale, which was not perished in fire. The Collector confirmed the demand under his order dated 24-3-75.

2. On behalf of the appellants, advocate Shri Korde first set out briefly the facts of the case including the report by the appellants to the Asstt. Collector. He submitted that the Central Excise Authorities contacted the Insurance company to find out whether the appellants' claim with the insurance company covered the duty amount or not. There was a dispute between the appellants and the Insurance Co. as to whether the insured amount included central excise duty element. This happened as the insured amount was marginally higher than the value of the fabrics. The appellants first approached the Board by way of appeal, but without success. The Board turned down the first appeal on these grounds; these were firstly, the appellants' liability to pay duty when the goods were consumed by fire before export. Secondly, the Board held that by virtue of the bond executed by the appellants they were liable to pay the central excise duty. The third ground held by the Board was that the appellants had received the amount of central excise duty alongwith their insurance claim. Shri Korde contended that the third ground was in dispute and therefore he would take up this question first for offering arguments. He reiterated that the Insurance Co. did not reimburse the appellants with the amount of central excise duty. Shri Korde suggested that in case the Tribunal were to allow the appeal he had no objection to the Tribunal informing the Insurance Co.

so that in case the Insurance Co. deems fit, it could reduce the appellants' claim to the extent of duty leviable. However, Shri Korde submitted either the appellants or the Insurance Co. should be given the benefit of the central excise duty involved in the goods lost through fire as the duty was not chargeable. The Insurance Co. had paid a lumpsum towards the appellants' claim. The goods were in the godown of M/s. Tulsidas Khimji Pvt. Ltd. in 18/22, Poona Street, Bombay-9 and they were destroyed by fire in the night of 25-5-1976. Shri Korde referred us to the Collector's

findings in his order and the show cause notice in this behalf. Thereafter, he read out the Board's appellate order. He contended that in arriving at the aforesaid decision the Board did not take into account the proviso(c) to Rule 14-A of the Central Excise Rules. The Board merely based its decision on the two points that the goods had not been exported and hence the appellants were liable to pay the duty and that they had executed a bond towards their liability in this behalf. The learned advocate read out Rules 13, 14 and 14-A. He vehemently argued that proviso(c) to Rule 14-A was applicable and the appellants were saved from the liability to pay the duty by virtue of this proviso as it had been established that the goods were destroyed in fire. He argued that proviso(c) was to be read with Rule 13(1) which permitted exports of goods in bond without payment of duty. If the goods are accounted to the satisfaction of the Collector, the duty was not leviable on the goods. The second question was whether duty was payable because of the bond executed by the appellants. The advocate answered this question by observing that the bond was for payment of duty in case of failure to export the goods.

But in case the goods were destroyed, they could not be exported and this was established to the satisfaction of the Collector. In such circumstances, the duty was not demandable from the appellants. In support of his contention Shri Korde relied on the Tribunal's decision in the case of Indian Oil Corporation 1985 (21) ELT 881. He contended that Rules 13,14 and 14A permitted export, of goods without payment of duty and the bond could not override the provisions of these Rules.

Shri Korde reiterated his submission that in case the appellants succeed in their appeal they would have no objection to the Tribunal's order being communicated to the Insurance Co.

3. On behalf of the Collector, Shri Senthivel stated that there was no dispute so far as the facts were concerned. The fabrics in question had been removed from the manufacturing mills in 1973. The fire broke out in the night of 25-5-1975. This was after the period of six months permitted under the Rules for the export of the goods. However, the appellants had sought extention for the period of re-export

which was granted. But the fire destroyed the goods after they were removed from the BSR and the manufacturing premises which were licensed under the Central Excise Rules. The fire was not in a warehouse and hence provisions of Rule 49 for remission of duty would not apply. The demand for duty had been confirmed under Rule 14-A after the issue of show cause notice. In the show cause notice there was no mention of the execution of the bond but this fact was not disputed and the liability to duty arose under Rule-14A in addition to the bond given by the appellants. The central excise duty was correctly leviable on the failure of the appellants to export the goods. Proviso(c) to Rule-14A could not be construed to empower the Central Excise Authorities to grant remission which was only permissible under Rule-49. Shri Senthivel read out Rule 49 also. As regards the learned advocate's reliance on the Tribunal's judgment in the case of Indian Oil Corporation, Shri Senthivel contended that this case was covered by Section 23 of the Customs Act and the ratio of the Tribunal's decision in that case could not be extended to the case under appeal. The appellants had taken risk in storing goods after the clearance and in terms of Rule-9 there was liability on the appellants to pay duty as there were no provisions under which remission could be granted in such a case. Apart from that the appellants had been reimbursed with the central excise duty amount by the Insurance Co. Shri Senthivel drew our attention to the certificate dated 13-3-1978 issued by the United India Fire & General Insurance Co. Ltd. which clearly shown that an amount of Rs.2,36,371 was towards excise duty out of the total claim of Rs. 36,87,000 settled by the Insurance Co. Shri Senthivel added that the fabrics in question had been cleared after being manufactured and duty was correctly demandable on them. In answer to the Tribunal's question Shri Sentivel submitted that proviso (c) to Rule 14-A did not empower the Central Excise Authorities to grant remission in case of goods cleared for export without payment of duty. He therefore submitted that the appeal should be dismissed.

4. In reply advocate Shri Korde argued that this was not a case of remission of duty. This was a case where duty was not demandable under Rule-14. Rule 13 laid down the procedure for export of goods in bond and Rule 14A provided for penalty for failure to furnish proof of export or for not accounting for the goods. So far as Rules 9 and 49 were concerned these were not relevant as argued by the

SDR. He mentioned the Tribunal's decision in the case of Indian Oil Corporation only to highlight that the bond cannot override the Rules. He, therefore, reiterated his request for allowing the appeal.

5. We have examined the submissions made on both the sides. So far as the facts are concerned, they are not in doubt or dispute. Therefore, the question involved in this appeal is the interpretation of proviso (c) to Rule 14-A of the Central Excise Rules, 1944. Before we proceed to examine the case it is necessary to dispose of the aspect about the Insurance Co. reimbursing the appellants of the duty amount. The levy of central excise duty under the Rules is entirely a separate matter from the appellants' claim of damages from the Insurance Co. Therefore, the first aspect has to be decided irrespective of the second aspect.

In this view we cannot allow our judgment to be affected by the fact that the appellants have received the claim from the Insurance Co.

which includes the duty amount. Therefore, we proceed to examine this matter on the basis of the Central Excise Law. The goods in question have been exported under Rule 13 of the Central Excise Rules without payment of duty. The appellants executed a general bond in terms of Rule-14. The aforesaid provisions therefore permitted the removal of the fabrics from the manufacturing mills without the payment of the central excise duty but on the condition that the goods will be exported. The goods have not been exported as they perished in fire.

Therefore, the question arises whether duty is not leviable in such a case. The answer to the question is given in the affirmative by the contention of the appellants. In this behalf, they have relied on the proviso(c) to Rule 14A. Before we examine this proviso it is necessary to examine Rule 14A itself. This Rule provides that the person exporting goods in bond in accordance with Rule 13 or 14 is liable to pay duty on the goods not exported, forthwith on the demand being made in this behalf. Therefore under Rule 14A there is no provisions for waiving the duty payable on the goods. The appellants have sought shelter of proviso (c) in not paying the duty. The question is therefore whether such an interpretation of proviso(c) is possible and acceptable. The exceptions have been made to Rule 14A in the case of provisos (a), (b) and (c). The proviso is wordeu in general terms

that nothing in Rule 14A will apply to the persons who have otherwise accounted for the goods to the satisfaction of the Collector.

Therefore, this account of the goods has to be in terms of the main Rule 14 which talks of export of the goods to the satisfaction of the Collector. There is no explicit provisions or any implicit meaning in proviso(c) which could authorise waiving of the duty. As argued by the learned SDR the duty is levied in terms of Section 3 of the Act but the actual collection is postponed at the stage of the removal of the goods from the factory in terms of Rules 9 and 49. Rule 49 provides specifically for remission of duty if the goods are destroyed while still in the bonded store room. After the goods are cleared from the factory they cease to be under the control of Central Excise Department and it would be impossible for the C.E. Department to verify whether the goods have been perished in fire or not as in the present case.

Thus, the control over the factory cannot be extended to the control on the goods which have been permitted clearance without payment of duty for the purpose of export. Therefore, in such a case, where the exporter is not able to export the goods he cannot claim waiver of the C.E. duty. This is a risk which he takes when he removes the goods and gives the bond. This risk had been covered by the appellants as prudent persons and they have taken out the Insurance policy and received the payment for the full amount including the C.E. duty element. Therefore, in terms of Rule 14A, the demand for duty is correct and proviso(c) cannot be interpretted to mean that the duty can be waived. Provisos (a) and (b) cover only those cases where duties have been paid on the goods consequent to diversion of goods for home consumption from exports. Proviso (c) has also to be interpretted similarly. It cannot be given a meaning which is different to the handing of the Rule. The power to waive duty or remit the same has to be explicit and not to be deducted by invidious interpretation of the proviso to the Rule, as in the case of Rule 49 or Rule 147. In fact the provisions of Rule 14A are quite contrary and hence we cannot accept the appellants' plea in this behalf.

6. The second point urged by the appellants is that the bond executed by them in terms of Rule 14 cannot override the provisions of Rule 14A.So far as this argument is concerned, we are inclined to accept the appellants' point of view. But

this does not save them from the liability to duty, which has arisen in terms of Rule 14A. The bond is an additional security which the C.E. Dept. can take in addition to the provisions of law on which they can rely for the collection of duty. It is not a parallel instrument but supplementary to provisions of Rules.

Therefore, we are not impressed with the appellants' argument to the effect that the duty cannot be demanded in terms of the bond. We are clearly of the view that the duty has been correctly demanded in terms of Rule 14A and it is only open to the Collector to resort to the bond to enforce this payment.

7. The appellants have relied on the Tribunal's judgment in the case of Indian Oil Corporation 1985 (21) ELT 881. But as contended by the learned SDR this is entirely in a different context under the Customs Act and the analogy is not applicable to the present case. Besides Section 23 of the Customs Act provides specifically for remission of duty while the intention and purpose of Rule 14 is to demand duty. On the other hand, if any judgment is to be relevant to this case, it is the one of Delhi High Court in the case of Hindustan Aluminium Corporation Ltd. 1981 ELT 642. In this judgment the High Court in para 16 has clearly held that export without payment of duty in terms of Rule 13 does not mean export without the liability to pay the duty. In the present case the liability had arisen as the goods had not been exported for whatever reasons, and the demand has been correctly made on the appellants for the payment of Central Excise Duty. There are no provisions in the C.E. Law to waive the duty including proviso (c) to Rule 14 and hence we find that the orders of the Collector and the Board are correct. We confirm the same and reject the appeal.

8. The short point for our consideration is whether no duty is demandable in respect of goods which were removed for export in bond under Rule 14 of the Central Excise Rules 1944 (for short the Rules, but were got destroyed by fire before export).

8A. For the appellants Shri Korde contended that the destruction of the goods by fire was accepted by the collector and since the collector was satisfied as to the accountal of the goods removed for export, no duty can be demanded in respect of the said goods and in that connection Shri Korde relied on Clause (c) of Rule 14-A

of the Rules. The further contention of Shri Korde was that the execution of the bond would not entitle the department to claim duty if the appellant had satisfactorily accounted for the goods removed in bond.

9. In order to appreciate the contentions of Shri Korde, it is necessary to understand the scheme of the Central Excise Act and Rules.

Section 3 of the Act provides for levy and collection of duties on excise on excisable goods which are produced or manufactured in India at the rate set forth in the First Schedule. The manner of collection of duty is provided in the Rules. Sub-rule (1) of Rule 9 provides that no excisable goods shall be removed from any place where they are produced or stocked or manufactured or any premises appurtenant thereto, which may be specified by the Collector in this behalf, whether for consumption, export or manufacture of any other commodity in or outside such place, until the excise duty leviable thereon has been paid at such place and in such manner as is prescribed in these Rules or as the Collector may require. The Proviso to this Sub-rule however permits deposit of goods without payment of duty in store-room or other place of storage approved by the Collector under Rule 27 or Rule 47 or in a warehouse appointed or licensed under Rule 140 or may be exported under bond as provided in Rule 13. Rule 13 provides the procedure for export under bond of goods on which duty has not been paid. Rule 14 provides for execution of general bond by a person desirous of exporting goods from India. Rule 14-A provides penalty for failure to furnish proof of export within the prescribed period.

10. Neither Rule 13 nor Rule 14 nor even Rule 14 A makes it obligatory for a person who has removed excisable goods to effect export.

Similarly neither Rule 13 nor Rule 14 nor Rule 14 A grants exemption of duty for goods removed for export in bond. Rule 13 which is the main Rule which provides the procedure for removal of goods for export in bond only provides for, postponement of payment of duty. It is Rule 12 of the Rules which provides for rebate of duty on goods exported. Rule 8 confers powers on the Central Government to exempt any excisable goods from whole or any part of the duty leviable on such goods by issuing a Notification in the Official Gazette.

11. It is not the case of Shri Korde that there was any such notification in respect of the goods which are the subject matter of this appeal. It was not contended before us that if the appellants had effected export they would not be liable to pay excise duty. If that be so, whether there is any merit in the appellants contention that no duty can be demanded in respect of goods removed in bond just because the goods got destroyed in fire before actual export.

12. If Rule 13 or Rule 14 did not provide exemption from payment of duty no resort can be had to Rule 14-A which is only a penal provision which provide for penalty for failure to furnish proof of export within the prescribed period. The only claim permissible to a person who had removed goods for export in bond is to claim rebate of duty on exported goods provided under Rule 12 on proof of export. The person who had removed excisable goods for export in bond cannot claim exemption from payment of duty by reason of Rule 14-A.13. Rule l4 A authorises the Collector to levy penalty and refuse to permit a person from making further export of excisable goods in bond besides making a demand for immediate payment to excise duty if a person who has removed excisable goods for export in bond had failed to export or furnish proof of such export to the satisfaction of the Collector. Clause (c) of the said Rules precludes the Collector from resorting to penalty provisions provided under Rule 14-A if he is satisfied that the goods removed for export were duly accounted for.

Neither Clause (c) nor Rule 14-A authorises the Collector to exempt from payment of duty on goods removed for export in bond.

14. In the above view of the matter, I agree with brother Dilipsinghji that this appeal should be rejected.

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