

Apar Pvt. Ltd. Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-27-1983

Reported in : (1983)LC934DTri(Delhi)

Judge : B Gujral, Vice-, S Duggal, R T K.L.

Appellant : Apar Pvt. Ltd.

Respondent : Collector of Customs

Judgement :

1. The ten appeals captioned above are directed against one order in appeal dated 20.4.1977 whereby the Appellate Collector of Customs Bombay disposed of ten orders passed by the Assistant Collector all on one date, namely 21.10.1976, on different refund applications, filed by the appellant company.

2. The refund applications were made by the appellant company, in relation to duties paid on certain imports, in the year 1971-72, but refund was applied, though by means of separate applications, in all cases on 16.10.1976. Assistant Collector of Customs rejected those applications without advert to the merits, on the ground of time-bar, by virtue of the provisions of 27(1) of the Customs Act 1962.

The Appellate Collector of Customs confirmed this order of the Assistant Collector on the appeals filed before him after giving the appellants personal hearing, after taking note of their arguments that the duties levied on them which were the subject matter of these refund applications, were not payable at the time of

imports, and as such were illegal collection, and that provisions of Section 27 of the Customs Act would apply only in the case of the duty legally leviable but held that since the amounts, for which the appellants had claimed refund in all the cases, were in respect of the duty of customs recovered under Customs Act, 1962, there was no question of illegality involved in the recovery thereof, and as Section 27(1) of the Act provided six months limitation which period had to be computed from the date of payment of duty, that period had strictly to apply, and that party's contention that the duty was outside the scope of Customs Act, and as such generally Law of Limitation was to apply, was not tenable. He, further, observed that Limitation Act applied to applications made to courts, and not to proceedings before authorities under the Customs Act. He thus held that Assistant Collector was right in rejecting the applications as barred by time. The appeals were thus dismissed. He disposed of their plea that Assistant Collector had not accorded personal hearing by observing that no such prayer had been made in the refund applications, and as such no prejudice can be said to have been caused to the appellants.

3. The appellants went in revision to the Central Government, reiterating the same pleas, and contending that the order passed by the Appellate Collector in dismissing their appeals was erroneous, illegal and contrary to the provisions of law, and he erred in holding that the duty was recovered under the Customs Act. They further pleaded that the Appellate Collector's views that the specific period of limitation, as provided by the Customs Act, would apply and not the general law of limitation, was erroneous and that the orders suffered from lack of application of mind on the part of the Appellate Collector, and that he erred in holding that the Limitation Act applied only to applications to courts. On the facts and circumstances of their case, they urged that only General Law of Limitation would apply, and that the Assistant Collector's orders were vitiated as he had disposed of their applications without giving any personal hearing. They further pleaded that the Appellate Collector ought to have taken into consideration their plea that the mistake in the payment of duty had been discovered by the appellants only after the judgment of the Bombay High Court, given in February, 1975 in *Sylvania and Laxman* case, and also that of *M/s Synthetics and Chemicals*, and consequently starting point of limitation was the time when the mistake came to the notice of the

appellants, and being payments made under mistake, the general law of limitation of three years would apply, and that too would start from date of discovery of mistake, which was in the month of February, 1975, and as the refund applications were made in October, 1976, those could not have been rejected, as barred by time, by reference to Section 27(1) of the Customs Act.

4. These revision petitions have been transferred to the Tribunal, to be disposed of as appeals, because of the provisions of Section 131B(2) of the Customs Act. These have been taken up accordingly for disposal.

5. Today, at the time of hearing Mrs. Pallavi Shroff, Advocate appeared with Miss Vasumati Chari, Advocate. At the outset, they requested for adjournment of the hearing on the appeals sine die, on the ground that the matter involving the legality of the levy of customs duty was before Bombay High Court, in relation to twenty eight other similar consignments, imported on or about the same period as the ten consignments, which are the subject matter of these appeals, and that it would be appropriate that these appeals were heard after the controversy as to dutiability had been resolved by the Bombay High Court. They, however, conceded that the issue of time bar, as envisaged by the Section 27 of the Customs Act was not before Hon'ble High Court of Bombay, and there only the question of dutiability was involved. In face of this provision we felt it not to be a fit case to entertain request for such a long adjournment... The learned Counsel, Mrs.

Shroff, was therefore asked to address arguments in these appeals, on the only point, involved, namely, that of time bar, which she did.

6. She reiterated all the pleas set out in the grounds of appeal, and emphatically urged that the refund applications were based on the plea that as a sequel to the Bombay High Court judgment in Sylvania and Laxman case, it became clear that the leviability to duty was to be determined in respect of date of import of the goods, which would be the arrival of the vessel carrying goods in the territorial waters of India, and exemption notification in respect to these goods was in force when the goods arrived in the territorial waters of India, customs duty had been wrongly collected, and thus it was not a collection authorised by law, and that it was a case of duty paid and recovered by mutual mistake, and thus a period of

three years, as laid down by Limitation Act, from the date of discovery of the mistake, would be available and that the principles of Section 72 of the Contract Act would apply in all these cases. She also referred to the authorities of the Hon'ble Supreme Court in *Patel India (Pvt.) Ltd.* 1973 Cen-Cus. July (i) (S.C) and *M/s Cawasji's Co.* in support of her contentions.

7. Shri A.K. Jain Senior Departmental Representative countered all these arguments by pointing out that any duty of imports, levied and collected by a Customs Officer has to be under the provisions of the Customs Act, and that the refund applications were also made with reference to Section 27 of the said Act, and as such it was not open to the party to urge general principles of law of Limitation to get refund on belated applications. He also brought to our notice, series of judgements passed by this Bench as well as other Benches of the Tribunal uniformly holding that Customs Act was a self-contained Act, and general law of Limitation cannot apply and that all refund applications made to the Customs Authorities are strictly governed by Section 27(1) of the Customs Act.

8. We have given very careful thought to the contentions set out by the appellants in the grounds of appeal, and reiterated by the learned Counsel at the time of hearing but we find that the plea about the applicability of general law of limitation as canvassed by the learned Counsel on behalf of the appellants is not at all tenable. We have considered in detail the authorities referred to by the learned Counsel, in our judgement, particularly in the case of *Miles India Ltd. v. Appellate Collector of Customs Bombay* reported as 1983 ECR 242D (CEGAT) and we have come to the positive conclusion that there being no provision, apart from Section 27 of the Customs Act, to apply for refund, it was not open to a party to apply for refund with reference to these provisions, and then urge that therestrictions as to time imposed by the said provisions would not apply. We have also noted that all the authorities in which it has been observed by their Lordships of the Supreme Court and some of the High Courts, that in cases of payments under mistake of law or of fact, principles of Section 72 of the Contract Act would apply, and that in turn would give three years' period under General Law of Limitation, were in exercise of writ jurisdiction, where there are plenary powers, or in civil suits where general law of Limitation would undisputably apply. Some of the authorities,

particularly Madras High Court in the case of Prem Raj Ganpat Raj & Co. (P.) Ltd. 1977 ELT J. 166 have rather endorsed the view that so far as authorities acting under the law laying down special provisions were concerned, they were bound by the limitation provided by the Special Act which they were administering. A later authority of the Supreme Court in Madras Rubber Factory case also upheld the orders of the Customs authorities in rejecting refund claim by reference to Section 27(1) of the Act. We have also observed that there are no provisions such as Section 5 of the Limitation Act contained in the Customs Act, so as to provide for extension of time on sufficient cause being shown and we have held that Customs Act being a self-contained statute the provisions of general law of Limitation cannot be inducted into the same. We have also held in another case, recently decided, namely Canara Workshop Ltd. v. Collector of Customs Madras in Appeal No. CD(SB)/179/82-B decided on 5.5.1983, that provisions of Section 5 of Limitation Act cannot be pressed into service even with the aid of Section 29(2) of the Limitation Act, so as to claim extension of limitation before the authorities acting under the Customs Act.

9. We are, therefore, of our firm view that the Assistant Collector did not act wrongly in rejecting refund applications which were made almost after five years of the date of import and 2 to 5 years after the date of payment of duties, as the particulars of cash number and bill of entry of original orders range from as far as back in October, 1971 to February, 1972, with only one in December, 1974, whereas the refund applications in all cases were made in October, 1976. The Assistant Collector and Appellate Collector, were therefore right in holding the refund application liable to rejection! being barred by time.

Accordingly, we do not find existence of any ground| to set aside the orders in appeal. The appeals before us are also liable to be dismissed, and are dismissed accordingly.

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