

Sun Industries Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-14-1987

Reported in : (1987)(14)ECC72

Appellant : Sun Industries

Respondent : Collector of Customs

Judgement :

1. 100,000 sets of ply wood tea Chest panels were shipped by the appellants M/s. Sun Industries by M.V. Mohurgong on 7.6.1980. The shipment was intended for delivery at Colombo. The ship developed engine trouble on the way and turned towards Paradeep Port. But before entering Paradeep Port the ship ran aground on 26.6.1980. The fittings, stores and cargo were later salvaged. The appellants had applied for drawback under Section 75 of the Customs Act in respect of the ply wood panels. The same was rejected by the Assistant Collector under his order dated 25.10.1980 on the ground that there had been no export of the goods as defined in Section 2(18) of the Customs Act. The appeal against the said order was dismissed by the Appellate Collector of Customs, Calcutta under his order dated 12.2.1981. The appellants preferred a revision petition to the Central Government against the said order. The same, on transfer, is now before us as this deemed appeal.

2. We have heard Shri G.C. Goho, Advocate for the appellants and Shri Vineet Kumar for the Department.

3. The contention of Shri Goho is that the shipment was under a C.I.F. contract and that on the loading of the goods on board the title had also passed to the purchaser and that the export was thus complete and the appellants were therefore entitled to the drawback claim. He further contended that after the ship left Calcutta the same had passed beyond the territorial waters of India and the engine trouble developed while the ship was in the High Seas and, thus, by reason of the ship having passed beyond territorial waters with the goods on board, the export of the goods out of India had been completed. According to him, the fact that subsequently the ship decided to sail into the territorial waters was of no relevance. He has produced records to establish that at the time the ship developed engine trouble it was beyond the territorial waters. He has also produced some records to show that the tea chest panels could not be salvaged since they had been fully damaged when the ship ran aground and was flooded.

4. On the other hand Shri Vineet Kumar contended that in order to establish that the goods have been exported there must be proof that the goods had reached a place outside India and that it would mean that the goods should have reached a country outside India and the mere fact of the ship having proceeded beyond the territorial waters of India would not be sufficient. In this connection he drew our attention to wordings of Section 35 as it stood prior to the amendment thereof in 1983.

5. But we find that this issue is fully covered by a decision of the Madras High Court (though the same was not cited before us during the hearing) in the case of Lucas TVS v. Assistant Collector 1987 (28) E.L.T. 266. It may be noted that in the said case drawback was claimed with reference to goods loaded on a vessel but which goods were partly damaged and partly destroyed even before the ship sailed. The drawback Claim was with reference to goods so loaded on the ship. The Madras High Court held that so far as drawback is concerned the exporter becomes entitled to the same the moment the goods are loaded on ship on completion of the presented formalities (and duty in connection therewith is paid). The High Court held that when the goods are loaded into the ship after being cleared by the appropriate officer they must be treated as having been exported so far as the exporter is concerned (Paragraph 24 of the judgment).

6. In view of the above decision there can be no doubt that in the present instance also the appellants were entitled to the drawback claimed. Accordingly this appeal is allowed, and the orders of the lower authorities are set aside with consequential relief.

7. I have carefully perused the order proposed by learned Brother Raghavachari. While I agree with the ultimate conclusion as to the manner of disposal of the appeal, I would like to add a few words of my own.

8. In the case of LUCAS-IVs (supra), the goods in question had been loaded on the carrying vessel and while the vessel was still in Port, there was a fire therein as a result of which the goods were damaged.

Consequently, the goods were unloaded. Subsequently, the damaged goods were sold in auction and were cleared by M/s. Lucas Indian Services Ltd., Madras, a subsidiary of Lucas-TVS. In the present case, the facts and circumstances are, if anything, stronger from the point of the appellants. As noted in Shri Raghavachari's order, the ship had left Calcutta and while she was in the high seas, developed engine trouble and then she diverted to Paradeep Port, in the course of which journey, the vessel ran aground. The departmental representative's contention was that there must be proof that the goods had reached a place outside India, that is, they should have reached a country outside India and that the mere fact that of the ship having proceeded beyond the territorial waters would not be sufficient.

9. In this connection, it is observed that the question, though in a somewhat different context came up before the West Regional Bench of this Tribunal in *Colourchem Ltd. v. Collector of Customs, Bombay* -1986 (25) ELT 402. Briefly stated, the facts were that the appellants had shipped certain goods and the carrying vessel had reached the port of destination. However, the goods were not unloaded at the port of destination and there was no knowing what happened to the goods. In the circumstances, the department's contention was that no drawback would be permissible unless it was established that the goods had in fact been landed at the foreign port of destination. The Bench, by a majority judgment, held that in the circumstances of the case, it had to be held that the

goods had been duly taken out of India to a place outside India and that the export was thus complete. It was further noted that there was no legal requirement that before becoming entitled to receive drawback, the Indian exporter must prove off-loading of the goods at a foreign port.

10. Though the facts in the present case are not exactly similar to the case decided by the West Regional Bench, the ratio would nevertheless apply. In the present case also, there is no dispute that the ship carrying the goods had crossed the territorial waters. Though she diverted to Paradeep Port because of engine trouble, she ran aground.

It appears that some cargo was salvaged. There is no evidence that the goods in the present case were either salvaged or that they were re-landed in India. Taking into consideration all these facts and circumstances, I agree that the appellants are entitled to receive the drawback due on the goods and that, accordingly, the appeal ought to be allowed and the orders of the lower authorities set aside with consequential relief.

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