

Commissioner of Central Excise Vs. Vijay Silk House Ltd.

Commissioner of Central Excise Vs. Vijay Silk House Ltd.

SooperKanoon Citation : sooperkanoon.com/37215

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-30-2004

Reported in : (2005)(181)ELT220TriDel

Judge : P Bajaj, M T K.C.

Appellant : Commissioner of Central Excise

Respondent : Vijay Silk House Ltd.

Judgement :

1. In this appeal, the challenge has been made by the Revenue to the impugned order-in-appeal vide which The Commissioner (Appeals) has reversed the order-in-original raising demand of interest from the respondents on the alleged delayed payment of the duty.

2. The facts are not much in dispute. The respondents presented three Bills of Entries for clearance of their imported consignments. Two Bill of Entries No. 0002/2001 and 003/2001 both dated 1-2-2001 were assessed by the competent authority on presentation by the respondents on 22-3-2001. However, payment was made in respect of the first Bill of Entry on 29-3-2001 and regarding the second on 31-3-2001. The third Bill of Entry No. 004/2001 was assessed on 29-3-2001 and payment was allegedly made on 10-4-2001.

3. The demand of interest has been raised by the Revenue on the ground that as per the provisions of Section 47 of the Custom Act, the duty was to be paid within

two days excluding holidays from the date on which the Bill of Entry was returned to the respondents for payment.

But having failed to pay the duty within the stipulated period, they are liable to pay the interest. The learned SDR has also reiterated this very ground and referred to TR-6 challans showing the payment of duty in respect of the above said Bill of Entries, and presentation of the same after the delay of five days, seven days and ten days respectively. Therefore, the demand of interest has been rightly raised by the Revenue. But, we are unable to subscribe to this contention of the learned SDR. Section 47(2) of the Customs Act only states that "where the importer fails to pay the import duty under sub-section (1) within two days (excluding holidays) from the date on which the bill of entries are returned to him for payment of duty, he shall pay interest at such rate, not below 10%." We find that the payment duty, as per the assessment order recorded on all the Bill of Entries in question, detailed above, was made by Demand Draft. These drafts were submitted to the bank on 23-3-2001; 24-3-2001 and 10-4-2001 respectively i.e.

within two days of the return of the Bill of Entries after assessment to the respondents. The payment by Demand Draft could not be said to be a conditional payment. The presentation of the TR-6 challans by the respondents to the Customs Authorities at later dates could not be taken to be the dates of the payment, especially when Section 47(2) of the Customs Act, does not state so. The Section only mandates, as observed above, that payments shall be made by the importer within two days from the date of return of the Bill of Entry after assessment to him. The payments as observed above, were made by the respondents within two days by presenting the Demand Draft to the bank.

4. Apart from this, the Larger Bench of this Tribunal, in the case of CCE, Jaipur v. Genus Overseas Electronics Ltd., 2003 (155) E.L.T. 541, has ruled payment of duty by cheque will be valid and the date of payment shall be the date on which the cheque was presented, if it had not been dishonored. Therefore, payment of duty by the respondents through drafts was valid. The contention of the learned SDR that the law laid down in this case is not applicable to the payment of duty to be made by the importer under Section 47(2) of the Customs Act, especially

keeping in mind the Board's Circular No. 28/2002-Cus. dated 24-5-2002, cannot be accepted. The said Board's Circular speaks of a payment by cheque and not by Demand Draft. The Larger Bench has taken the above said view after referring to the law laid down by the Apex Court in the case of K. Saraswathy v. P.S.S. Somasundaram Chettiar, 1989 (40) S.C. 527 (sic.) and Commissioner of Income Tax, Bombay South v. Ogale Glass Works Ltd., AIR 5. In view of the discussion made above, we do not find any illegality in the impugned order of the Commissioner (Appeals) who had rightly dropped the demand for interest against the respondents. Therefore, the impugned order is upheld and the appeal of the Revenue is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com