

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

Commissioner of Customs Vs. I2 Technologies Software Pvt. Ltd.

Commissioner of Customs Vs. I2 Technologies Software Pvt. Ltd.

SooperKanoon Citation : sooperkanoon.com/388696

Court : Karnataka

Decided On : Aug-02-2007

Reported in : 2008(128)ECC245; 2008(154)LC245(Karnataka);
2007(217)ELT176(Kar); 2008(3)AIRKarR166(DB)

Judge : V. Gopala Gowda and; Arali Nagaraj, JJ.

Acts : [Customs Act, 1962](#) - Sections 2(44), 15, 15(1), 23, 23(2), 46, 47, 59, 60, 61, 61(1), 61(2), 62, 64, 68, 71, 72, 72(1), 72(2), 111, 112, 114, 117 and 130(1); Customs Rules; Customs Regulations; Central Excises Act, 1944 - Sections 3(1)

Appeal No. : C.S.T.A. 13/2006

Appellant : Commissioner of Customs

Respondent : i2 Technologies Software Pvt. Ltd.

Advocate for Def. : K.S. Ravishankar, Adv.

Advocate for Pet/Ap. : Arvind Kumar, A.S.G.

Disposition : Appeal dismissed

Judgement :

Arali Nagaraj, J.

1. This appeal is filed by the Commissioner of Customs, Bangalore, under Section 130(1) of the [Customs Act, 1962](#) (hereinafter referred to as 'the Act') questioning the correctness of the order dated 23.8.2005 passed by the Customs, Excise and Service Tax, Appellate Tribunal, South Zone, Bangalore (hereinafter referred to as 'the Tribunal') in Appeal No. C. 379/2004 (Final Order No. 1468/2005) setting aside the order in Original dated 7.7.2004 passed by the appellant (Commissioner of Customs, Bangalore) holding that the respondent Company is not liable to pay excise duty under Section 72(1)(b), interest under Section 61(2)(i) and penalty under Section 112(a) of the Customs Act (hereinafter referred to as the Act') which were levied and imposed by him.

2. The brief facts of the case are as under:

a) The respondent Company has been a licensed S.T.P. unit at Bangalore engaged itself in development and export of software. Ever since its establishment it has been importing capital goods for the said purpose. The said capital goods comprise of mainly duty free computers and peripherals. In its usual course of business it imported certain quantities of capital goods namely computers and peripherals and with the permission of the proper officer obtained under Section 60 of the Act, deposited them into bonded warehouse. As provided under Section 61(1)(a) of the Act the said capital goods were permitted to be stored in the said warehouse till the expiry of five years from the date of the said permission and (his period could be extended by the Commissioner of Customs on the application of the respondent Company.

b) The initial period of five years in respect of warehousing of few of the said goods expired during the year 2001 and therefore the respondent company filed its application on 30.6.2003 before the Commissioner of Customs seeking extension of the warehousing period in respect of goods under two bonds which had expired on 16.6.2001 and 6.2.2002. Since the said application was filed after considerable delay after the expiration of the initial period of five years the delay was sought to be condoned by filing proper application. After the said application for extension of warehousing period was filed, the customs authorities found, on inspection, that many more items of the goods had outlived the bonding period in

the said warehouse and they were not in working condition. Thereafter, the respondent Company filed one more application on 19.8.2003 seeking extension of warehousing period in respect of warehoused goods under as many as 115 bonds out of which in respect of 98 bonds the initial warehousing period had already expired. Condonation of delay in making the said application was also sought for.

c) Two numbers of UPS in respect whereof the application for extension of warehousing period was filed by the respondent Company on 30.6.2003 were actually found kept in un-bonded premises. Therefore in respect of the same the respondent Company paid on 26.8.04 a sum of Rs. 2,69,776/-, which comprises of duty of Rs. 1,89,120/- and interest of Rs. 80,656/-. Respondent company addressed to the Chief Commissioner of Customs a letter on 3,9.2003 abandoning/relinquishing its ownership in respect of all the remaining warehoused goods as per the list annexed therewith. The said goods were covered under 71 bonds. Subsequently the respondent Company made payment of a sum of Rs. 19,90,450/- being the duty payable on bonding of the goods in respect whereof the warehousing period was expired. However, the said payment was made under protest.

d) A show cause notice dated 27.2.2004 was issued by the customs authorities to the respondent Company requiring it to show cause as to why the goods covered under 71 bonds valued at Rs. 4,09,63,879/- which had outlived the warehousing period should not be confiscated to the Government and why an amount of Rs. 19,90,450/- being the duty chargeable thereon should not be demanded under Section 72(1)(b) of the Act. The respondent Company submitted its written explanation to the said show cause notice on 1.6.2004 denying the allegations therein made against it and also contending that it is not liable to pay the said amount of duty.

e) The Commissioner of Customs, Bangalore, after considering all the facts and circumstances of the case passed an order dated 7.7.2004 wherein the amount of duty, interest and penalty proposed in the said show cause notice came to be confirmed. Aggrieved by the said Order in Original the respondent filed an Appeal

No. C 379/2004 before the Tribunal which passed the impugned order setting aside the Order in Original. Aggrieved by the said order of the Tribunal, the present appeal is filed by the Revenue.

3. We have heard the arguments of both sides and perused all the records. In the light of the arguments advanced by the learned Counsel for the appellant Revenue and the respondent the following substantial questions of law emerge for our consideration and decision (hereon:

i) Whether, by virtue of the provisions of Sections 72(1)(a) and 72(2) of the [Customs Act, 1962](#) the respondent Company lost in right Under Section 68 of the Act to relinquish title to the warehoused goods on the expiry of the period permitted under Section 61(1)(a) or the extended period under the proviso thereto.

ii) Whether the respondent Company became liable to pay, with respect to warehouse goods, as provided under Section 72(1)(a) of the Act the full amount of duty chargeable together with all penalties and interest by reason of allowing the said goods to remain in the warehouse after the expiration of the warehousing period permitted under Section 61(1)(a) or extended under proviso to Section 61(1), despite the company intimating the Customs Department in writing the relinquishment of its title to the said goods in terms of Sections 23(2) and 68 of the said Act?

4. The learned Asst. Solicitor General Sri Aravind Kumar appearing for the appellant (Revenue) strongly contended (that since the respondent Company did not file an application for extension of warehousing period before the expiration of live years period fixed under Section 61(1)(a) of the Act, after expiration of the said period, the goods could no longer be termed as warehoused goods and the Company lost its title to the same and consequently it lost its right to relinquish its title thereto. He further urged that the relinquishment of title to the said goods ought to have been made by the respondent Company before the expiration of the warehousing period and not thereafter and therefore the said goods were deemed to have been improperly removed from the bonded warehouse and consequently, the respondent Company became liable to pay duty, penalty and interest with respect to the said goods as provided under Section 72(1)(b) of the Act.

5. As against the above contentions Sri K.S. Ravishankar, the learned Counsel for the respondent Company, contended that the provisions of Sections 68 and 72 of the Act can be applied only to the warehoused goods as defined under Section 2(44) of the Act and not otherwise and the said goods continued to be 'warehoused goods' till their actual removal from the warehouse, therefore, it cannot be said' that on the expiration of the warehousing period permitted under Section 61(1)(a) of the Act the goods ceased to be warehoused goods and the respondent Company lost its title to the same. He further contended that by virtue of proviso to Section 68 of the Act which came into force with effect from 14.5.03 (i.e., earlier to the filing of the applications by the respondent Company on 30.6.2003 and 19.8.2003 seeking extension of warehousing period and also earlier to the letter dated 3.9.2003 relinquishing its title to the said goods) read with the provisions of Section 23(2) of the Act the respondent Company had right to relinquish its title to the said goods 'at any time before an order for clearance of the goods for home consumption' could be made in respect of the said goods and therefore since the respondent Company relinquished its title to the said goods in terms of Sections 68 and 23(2) of the Act no duty, penalty or interest could be imposed and recovered from it. By contending so Sri Ravishankar, Advocate, submitted that the Tribunal was quite justified in allowing the appeal of the respondent Company and setting aside the order in Original that was passed by the Commissioner of Customs confirming the propositions made in the show-cause notice issued to the respondent-Company.

6. In support of his above contentions, the learned ASG Sri Aravind Kumar has placed strong reliance on the decision of the Supreme Court in *Kesoram Rayon v. Collector of Customs, Calcutta* reported in : 1996(86)ELT464(SC) . For proper comparison of the facts in the said case with those in the present case and to see whether the principles therein can be applied to the facts of the case on hand, it is necessary to narrate briefly the relevant facts in the said case, which are as under:

6A. The appellants therein imported 4,832 bales of rayon grade wood pulp and warehoused the same in a private bonded warehouse on 16.6.1984. Out of the said bales 4,000 were cleared and 832 bales continued to remain in the warehouse. The warehousing period in respect of the said bales came to an end

on 15.9.1984. On 8.5.1985 the Asst. Collector of Customs issued to the appellants a demand notice under Section 72(1) of the Act demanding from them customs duty and interest thereon in respect of the said 832 bales on the ground that though their warehousing period had expired by 15.9.84 the goods were left to remain in the warehouse and therefore the appellants were liable under Section 72(1)(b) of the Act to pay duty and interest in respect of the said goods.

6B. On 30.5.1995 the appellants filed a bill quodotery for bond clearance of the said bales for home consumption. On the said application the authority passed an order dated 25.6.1985 recalling the said demand notice dated 8.5.1985 and directing the Superintendent of bonded warehouse to allow clearance of the said bales alter realisation from the appellants of such amount as was due by them. Accordingly the said bales came to be removed from the bonded warehouse between 29th June and 2nd July 1985.

7. On the above facts and circumstances in the above said case the question to be decided therein was, what should be the date for determination of the duty under Section 15(1)(b) of the Act - whether it should be the dale on which the said 832 bales were 'actually removed' from the warehouse or the dale of expiration of the warehousing period on which date the 'goods were deemed to have been improperly removed¹ from the warehouse as provided under Section 72(1) of the Act. While deciding the said the Hon'ble Supreme Court observed at para Nos. 13, 14 and 16 as under:

13. Goods which are not removed from a warehouse within the permissible period are treated as goods improperly removed form the warehouse. Such improper removal takes place when the goods remain in the warehouse beyond the permitted period or its permitted extension. The importer of the goods may be called upon to pay Customs duly on them and, necessarily, it would be payable at the rate applicable on the date of their deemed removal from the warehouse that is, the date on which the permitted period or its permitted extension came to an end.

14. Section 15(1)(b) applies to the case of goods cleared under Section 68 from a warehouse upon presentation of a bill of entry for home consumption; payment of

duty, interest, penalty, rent and other charges; and an order for home clearance. The provisions of Section 68 and, consequently, of Section 15(1)(b) apply only when goods have been cleared from the warehouse within the permitted period or its permitted extension and not when, by reason of their remaining in the warehouse beyond the permitted period or its permitted extension, the goods have been deemed to have been improperly removed from the warehouse under Section 72.

15. ...xxxx...xxxxx...

16. The permitted period for warehousing the said bales came to an end on 15th September, 1984, but the said bales remained in the bonded warehouse thereafter. The said bales, by reason of the provisions of Section 72, were deemed to have been improperly removed from the bonded warehouse on that day and subject to duty at the rate then in force. The demand notice dated 8th May, 1985, called upon the appellants to pay such duty. The order dated 25th June, 1985, pertaining to the appellants' private bonded warehouse, rightly made it clear that the said bales had not been cleared therefrom on an ex-bond bill of entry under Section 68 but under Section 72. While the appellants may have filed an ex-bond bill of entry pertaining to the Raid bales on 30th May, 1985, there is nothing on record that suggests that clearance thereon under Section 68 was ordered. Section 15(1)(b) has, therefore, no application.

8. The above principles laid down by the Hon'ble Supreme Court in the said case (Kesoram's case) cannot be applied to the facts of the present case inasmuch as the facts in this case differ from those in the said case. The difference is as under:

i) Major portion of the warehoused goods (i.e., 4000 bales of rayon grade wood pulp) were cleared and only 832 bales were allowed to remain in the warehouse after expiration of the warehousing period and even they also came to be cleared by the appellants therein between 29th June and 2nd July 1985 as per the order dated 25th June 1985 on payment of such amount as was due by the appellants but the same is not the case of the respondent Company in the instant case.

ii) Either during the warehousing period or after its expiration, no application was submitted by the appellants in the said case seeking extension of warehousing period in respect of the goods which had remained in the warehouse after expiry of the said period. But the respondent-Company herein has filed its applications dated 30.6.2003 and 19.8.2003 seeking extension of the warehousing period in respect of the warehoused goods which had remained in the warehouse after expiry of the said period.

iii) Demand Notice was issued under Section 72(1) of the said Act in the said case shortly after expiration of the warehousing period calling upon the appellants therein to pay duty and interest in respect of the goods which had remained in the warehouse. But no such Demand Notice was issued to the respondent-Company herein before it filed its applications dated 30.6.2003 and 19.8.03 seeking extension of warehousing in respect of the goods remaining in the warehouse after expiration of initial period of 5 years or before it addressed its letter dated 3.9.2003 intimating the customs authorities relinquishment of its title to the said goods.

iv) There was no relinquishment by the appellants in the said case, of their title to the said goods either during the continuance or after expiration of the warehousing period. But in the instant case the respondent-Company, by addressing its letter dated 3.9.2003 to the customs authorities, intimated relinquishment of its title to the said goods.

v) Further, the question to be decided in the said case was that, what should be the date for determination of duty under Section 15(1)(b) of the Act in respect of the goods which came to be cleared from the warehouse, 'whether it should be the date on which the said goods were actually removed from the warehouse' as provided under Section 68 of the Act or 'whether it should be the date of expiration of the warehousing period on which dates the goods were deemed to have been improperly removed from the warehouse' as provided under Section 72(1) of the Act.

In view of the above differences between the facts in that (Kesoram's) case and in the instant case, the Tribunal, rightly made distinction between the facts of the said case with those of the present case and declined to apply the principles laid down

in the said case to the facts of the present case.

9. For the proper application of various provisions of the [Customs Act, 1962](#), to the facts of this case, it would be necessary to cull out some of the relevant provisions of the said Act. Section 2(44) of the Act defines thus: 'Warehoused goods' means goods deposited in a warehouse.' Further, Section 60 of the Act which provides for permission for deposit of goods in the warehouse reads as under:

Section 60. Permission for deposit of goods in a warehouse.- When the provisions of section 59 have been complied with in respect of any goods, the proper officer may make an order permitting the deposit of the goods in a warehouse.

Section 59 of the Act provides for execution of bond by the importer in respect of the goods specified in Section 61(1) of the Act which he intends to deposit in a warehouse binding himself in a sum equal to twice the amount of the duty assessed on such goods and giving further undertaking that he shall observe all the provisions of the Act, Rules and Regulations in respect of such goods and that he shall pay all duties and interest, if any, payable under Section 61(2) of the Act and also the rent and charges together with penalties incurred for violation of the provisions of this Act. 9A Section 61 of the Act, which provides for the period for which the goods may remain warehoused, reads as under:

Section 61. Period for which goods may remain warehoused.- (1) Any warehoused goods may be left in the warehouse in which they are deposited or in any warehouse to which they may be removed,-

(a) in the case of capital goods intended for use in any hundred percent. Export oriented undertaking, till the expiry of five years;

(aa) ...xxx...xxx...

(b) ...xxx...xxx...

after the date on which the proper officer has made an order under Section 60 permitting the deposit of the goods in a warehouse:

Provided that-

(i) in the case of any goods which are not likely to deteriorate, the period specified in Clause (a) or Clause (aa) or Clause (b) may, on sufficient cause being shown, be extended-

(A) in the case of such goods intended for use in any hundred per cent export-oriented undertaking, by the Commissioner of Customs, for such period as he may deem fit; and

(B) in any other case, by the Commissioner of Customs, for a period not exceeding six months and by the chief Commissioner of Customs for such further period as he may deem fit;

Provided further that when the licence for any private warehouse is cancelled, the owner of any goods warehoused therein shall, within seven days from the date on which notice of such cancellation is given or within such extended period as the proper officer may allow, remove the goods from such warehouse to another warehouse or clear them for home for home consumption or exportation.

(1) where any warehoused goods-

(i) specified in Sub-clause (a) or Sub-clause (aa) of Sub-section (1), remain in a warehouse beyond the period specified in that sub-section by reason of extension of the aforesaid period or otherwise, interest at such rate as is specified in Section 47 shall be payable, on the amount of duty payable at the time of clearance of the goods in accordance with the provisions of Section 15 on the warehoused goods, for the period from the expiry of the said warehousing period till the date of payment of duty on the warehoused goods;

(ii) xxx xxxx xxxx

Provided that the Board may, if it considers it necessary so to do in the public interest, by order and under circumstances of an exceptional nature, to be specified in such order, waive the whole or part of any interest payable under this section in respect of any warehoused goods.

Provided further that the Board may, if it is satisfied (hat it is necessary so to do in the public interest, by notification in the Official Gazette, specify the class of goods in respect of which no interest shall be charged under this section.

Explanation.-For the purposes of this section, 'hundred per cent export-oriented undertaking' has the same meaning as in Explanation 2 to Sub-section (1) of Section 3 of the Central Excises and Salt Act, 1944 (1 of 1944).

9B. Sections 62 and 64 which respectively provided for control over the warehoused goods by the customs department and the rights of owner to deal with the warehoused goods read as under;

Section 62. Control over warehoused goods.- (1) All warehoused goods shall be subject to the control of the proper officer.

(2) No person shall enter a warehouse or remove any goods therefrom without the permission of the proper officer.

(3) The proper officer may cause any warehouse to be locked with the lock of the Customs Department and no person shall remove or break such lock.

(4) The proper officer shall have access to every part of a warehouse and power to examine the goods therein.

Section 64. Owner's right to deal with warehoused goods.- With the sanction of the proper officer and on payment of the prescribed fees, the owner of any goods may either before or after warehousing the same-

(a) inspect the goods:

(b) separate damaged or deteriorated goods from the rest;

(c) sort the goods or change their containers for the purpose of preservation, sale, export or disposal of the goods;

(d) deal with the goods and their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods;

(e) show the goods for sale; or

(J) take samples of goods without entry for home consumption, and if the proper officer so permits, without payment of duty on such samples.

9C. Section 71 of the Act, which prohibits the taking out of the goods from the warehouse, reads as under:

Section 71. Goods not to be taken out of warehouse except as provided by this Act.- No warehoused goods shall be taken out of a warehouse except on clearance for home consumption or re-exportation or for removal to another warehouse, or as otherwise provided by this Act.

Further, Sections 47 and 68, which provides for clearance of goods for home consumption, read as under:

Section 47 Clearance of goods for home consumption- (1) Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under (his Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption,

Section 68. Clearance of warehoused goods for home consumption.- The importer of any warehoused goods may clear them for home consumption if-

(a) a bill of entry for home consumption in respect of such goods has been presented in the prescribed form;

(b) the import duty leviable on such goods and all penalties, rent, interest and other charges payable in respect of such goods have been paid; and

(c) an order for clearance of such goods for home consumption has been made by the proper officer:

Provided that the owner of any warehoused goods may, at any time before an order for clearance of goods for home consumption has been made in respect of such goods, relinquish his title to the goods upon payment of rent, interest, other

charges and penalties (that may be payable in respect of the goods and upon such relinquishment, he shall not be liable to pay duty thereon.

[this proviso came to be inserted by Act 32 of 2003 Section 114 (w.e.f. 14.5.2003)]

10. From the plain reading of the provisions of Sections 60, 61, 62, 64, 71, 68 and 47 of the Act, as culled out supra, it could be noticed that:

i) An importer may deposit the imported goods in a bonded warehouse with the permission of the proper officer as provided under Section 60 of the Act after executing the necessary bonds in respect of such goods undertaking to pay twice the amount of duty assessed on such goods, rent, charges, interest and penalty, if any, payable on such goods and also giving undertaking that he shall observe all the provisions of this Act, Rules and Regulations in respect of such goods.

ii) As provided under Section 61(1)(a) of the Act such goods may be allowed to remain warehoused for initial period of five years.

iii) As provided under proviso to Section 61(1), the initial warehousing period may be extended to any further period even after its expiration, if the importer makes an application to that effect.

iv) As provided under Section 62 of the Act, the control over the warehoused goods shall remain with the proper officer and the owner thereof shall not enter the warehouse or remove any goods therefrom either during, or after expiration of the warehousing period without the permission of the proper officer. However, as provided under Section 64 of the Act, the owner of the goods will be permitted to inspect the goods, separate the damaged or deteriorated goods from the rest, sort the goods or change their containers for the purpose of preservation, sale, export or disposal of the goods, take samples of the goods, etc.

v) The owner of the goods will also be permitted under Sections 47 and 68 of the Act to clear the goods from the warehouse after obtaining an order to that effect from the proper officer.

vi) As provided under Section 68, the owner of warehoused goods may clear such goods from warehouse by preventing a bill of entry for home consumption in the prescribed form and after obtaining an order of clearance from the Proper Officer (under Section 47 of the Act) and upon payment of import duty and all penalties, rent, interest and other charges payable in respect of the said goods.

vii) As provided under proviso to Section 68, which came into force with effect from 14.5.2003, the owner of the warehoused goods may relinquish his title to such goods at any time before an order for clearance of the goods for home consumption' has been made and, upon such relinquishment, he shall not be liable to pay duty thereon. However, he has to pay rent, interest and other charges and penalties that may be payable in respect of such goods.

From these provisions it is crystal clear that the moment the owner of the goods (i.e., importer) deposits the goods in the warehouse under the bond executed by him, though loses control over the goods, does not lose his title or ownership to such goods so long as they remain in the warehouse either during the continuance of the warehousing period or even after its expiration. Therefore, the contention of the learned ASG for the appellant-Revenue that on the expiration of the warehousing period, as initially fixed under Section 61(1)(a) or on the expiration of the extended period under the proviso to Section 61(1), the owner of the goods loses his title or ownership in respect of such goods and consequently he also loses his right to relinquish his title to such warehoused goods, cannot be accepted.

11. Further, in Kesoram's case, which is strongly relied upon by the learned ASG appearing for the appellant-Revenue, the Hon'ble Supreme Court examined the provisions of Section 15(1)(b) of the Act and Sections 68 and 72 in the context of deciding as to which date is to be considered for determination of duty under Section 15(1)(b) of the Act i.e., whether 'the date of actual removal of the goods from the warehouse' or 'the date of expiration of the warehousing period on which date the goods were deemed to have been improperly removed from the warehouse' as provided under Section 72(1) of the Act but not in the context of deciding whether, on expiration of the initial warehousing period or its extended

period the owner of the goods loses his title/ownership to the goods by allowing (hem to remain in the warehouse alter expiration of the said period and consequently he loses his right to relinquish his title/ownership to such goods.

12. Section 15 of the Act which provides for determination of rate of duty, etc. reads as under:

Section 15. Date for determination of rate of duty and tariff valuation of imported goods.- (1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force,-

(a) in the case of goods entered for home consumption under Section 46, on the date on which a bill of entry in respect of such goods is presented under that section;

(b) in the case of goods cleared from a warehouse under Section 68, on the date on which a bill of entry for home consumption in respect of such goods is presented under that section.

(c) in the case of any other goods, on the date of payment of the duty:

Provided that if a bill of entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be.(2) ...xxx...xxxx...

13. Further, Section 47 provides for clearance of the goods for home consumption by the importer after obtaining an order Proper Officer. Section 68 provides for clearance of warehoused goods for home consumption by presenting a bill of entry in the prescribed form and after obtaining from the Proper Officer an order of clearance and upon payment of duly and all penalties, rent, interest and other charges payable in respect of such goods. Proviso to Section 68 gives to the owner of such goods a right to relinquish his title there to at any lime before an order for clearance of goods for home consumption has been made.

Section 23(2) of the Act, which also provides for relinquishment of title to the imported goods by the owner, reads as under:

Section 23. Remission of duty on lost, destroyed or abandoned goods:

(1) xxxx xxxx

(2) The owner of any imported goods may, at any time before an order for clearance of goods for home consumption under section 47 or an order for permitting the deposit of goods in a warehouse under Section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon.

Further, Section 72 of the Act, which deals with goods improperly removed from the warehouse, etc., reads as under:

Section 72. Goods improperly removed from warehouse, etc.,- (1) In any of the following cases, that is to say,-

(a) Where any warehoused goods are removed from a warehouse in contravention of Section 71;

(b) Where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under Section 61 to remain in a warehouse.

(c) xxx...xxx

(d) xxx...xxx

the proper officer may demand, and the owner of such goods shall forthwith pay, the full amount of duty chargeable on account of such goods together with all penalties, rent, interest and other charges payable in respect of such goods.

(2) If any owner fails to pay any amount demanded under Sub-section (1), the proper officer may, without prejudice to any other remedy, cause to be detained and sold, after notice to the owner (any transfer of the goods notwithstanding)

such sufficient portion of his goods, if any in the warehouse, as the said officer may select.

14. In the light of the above provisions we are of the opinion that the Hon'ble Supreme Court, while interpreting the provisions of Section 72(1) and (2) of the Act as to the improper removal of warehoused goods from the warehouse in the context of determining the date to be considered for quantifying the customs duty on the warehoused goods at the time of their clearance from the warehouse, observed at para 14 of the judgment in Kesorams's case that:

The provisions of Section 68 and, consequently, of Section 15(1)(b) apply only when goods have been cleared from the warehouse within the permitted period or its permitted extension and not when, by reason of their remaining in the warehouse beyond the permitted period or its permitted extension, the goods have been deemed to have been improperly removed from the warehouse under Section 72.

It is pertinent to note here that the Hon'ble Supreme Court did not lay down in the said case law to the effect that in the event of the importer allowing the warehoused goods to remain in the warehouse even after the expiration of the initial period of warehousing or the extended period he loses his right to relinquish his title to the said goods and consequently becomes liable to pay full amount of duty chargeable on such goods together with all penalties and interest. On a plain reading of the provisions of Sections 23(2), 47, 68 and the proviso to Section 68, it is clear that the owner of any warehoused goods has right to relinquish his title to such goods 'at any time before an order for clearance of goods for home consumption has been made in respect thereto'. There is no prohibition for the owner of the goods to exercise his right to relinquish his title to such goods after the expiration of the warehousing period or after expiration of the extended period. Further, the provisions of Section 23(2) and proviso to Section 61 make it clear that upon relinquishment of his title to any imported goods including the warehoused goods, the owner of such goods shall not be liable to pay duty thereon. When he is not liable to pay duty, the question of paying any interest on the duty and the penalty does not arise. Therefore, we are of the considered view

that by virtue of proviso of Section 68 and the provisions of Section 23(2) of the Act, the respondent Company herein had right to relinquish its title to the said goods even after expiry of the warehousing period and as such, the relinquishment of his title to the said goods by addressing his letter dated 3.9.2003 before Hit Commissioner of Customs proceeded against the respondent-company under Section 72(2) of the Act by issuing show cause notice proposing to impose duty, penalty, interest, etc., was legal and valid.

14A. In support of his case the learned Counsel for the respondent-Company placed reliance on the following decisions:

1. i2 Technologies Software Pvt. Ltd. v. cc ,
2. Swasik Rubber Products Ltd. v. cc ,
3. CCE & Cus. V. Gardeb Silk Mills Ltd. ,
4. Mafatlal Fine Spinning & . v. UOI 1997 (27) ELT 19 (Bom.),
5. Priyanka Overseas Pvt. Ltd. v. UOI : 1991(51)ELT185(SC) ,
6. Prakash Cotton Mills (P) Ltd. v. B. Sen and Ors. 1979 ELT 241 (Supreme Court),
7. Northern Corporation v. UOI : 1990(49)ELT332(SC) ,
8. Pradeep Uttal v. CC ,
9. Phoenix International Ltd v. CC 2004 (62) RLT 181 (T-Che.),
10. Sunil Jugalkishore Gupta v. UOI : 1988(36)ELT75(Bom) ,
11. CBS Gramophone Records & Tapes (India) Ltd. v. CC ,
12. Kiran Spinning Mills v. CC : 1999(113)ELT753(SC) ,
13. UOI v. Apar Pvt. Ltd. : 1999ECR63(SC) ,
14. LML Ltd. v. CCE : 2002ECR280(SC) ,
15. Jagannagth v. UOI : 1978(2)ELT304(SC) ,
16. Parthiba Processors v. UOI : 1996(88)ELT12(SC) ,
17. Copy of Notification No. 67/96-Cus (NT) dt. 1.11.1995.

Suffice to say that the principles laid down in the above decisions need not be discussed at length inasmuch as the same are not applicable to the facts of the present case.

15. In view of our findings, supra, the two substantial questions of law that are framed in this judgment deserve to be answered in the negative and in favour of the respondent-Company and they are answered accordingly. Therefore, the impugned order dated 23.8.2005 passed in Appeal No. C 379/04 by the appellant herein setting aside, the Order in Original dated 7.7.2004 passed by the Commissioner of Customs, Bangalore, so far as it relates to imposing on the respondent Company duty of Rs. 19,90,450/- under Section 72(1)(b) of the Act

and the interest of Rs. 5,54,643/- under Section 61(2) of the Act; confiscation of the said goods under Section 111(j) and (o) of the Act with option to the respondent-Company to redeem the same on payment of line of Rs. 5,00,000/- and also imposing of penalty of Rs. 2,00,000/- under Section 112 of the Act does not call for interference in this appeal. However, the said Order in Original in so far as it relates to imposing of duty of Rs. 1,89,120/- and interest of Rs. 80,656/- on the respondent-Company in respect of two numbers of UPS which were found kept in un-bonded premises deserves to be confirmed and as such the impugned order in appeal passed by the Tribunal needs modification. However, as imposition of duty of Rs. 1,89,120/- and interest of Rs. 80,656/- in respect of the said two numbers of UPS has been accepted by the respondent-Company and the payment of the same has already been made by it. For the foregoing reasons, while answering both the substantial questions of law in the negative and against the appellant-Revenue, we dismiss the appeal. However, liberty is given to the Commissioner of Customs to recover from the respondent-Company the rent, interest under Section 68 of the Act in respect of the warehoused goods left in the warehouse, from the date of their deposit till 3.9.2003, the date of relinquishment of title thereto by the respondent company, and penalty under Section 117 of the Act in respect of the said goods. After adjusting the amount of rent, interest and penalty from out of the amount of Rs. 19,90,450/-, which was deposited by the respondent-Company, the Commissioner of Customs shall refund the balance amount to the respondent-Company.

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