

Overseas Traders Vs. Commissioner of Cus. (imp. and

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-25-2005

Reported in : (2006)(193)ELT42TriDel

Judge : P Bajaj

Appellant : Overseas Traders

Respondent : Commissioner of Cus. (imp. and

Judgement :

1. In this appeal which has been filed by the appellants against the impugned order-in-appeal, the issue relates to the refund of duty to the appellants.

2. The facts are not much in dispute. The appellants imported one consignment of cosmetic goods. They filed Bill of Entry dated 11-4-2000 for the clearance of those goods. The competent authority assessed the customs duty payable on the goods and they deposited the same on 15-4-2000. Thereafter, the goods were confiscated and reassessed in pursuance to the order of the Addl. Commissioner. The goods were ordered to be confiscated with an option to re-deem the same on payment of redemption fine of Rs. 1 lakh and short paid customs duty of Rs. 1,03,271/-. That order was, however, challenged by the appellants before the Tribunal who set aside the same. Again the customs duty was reassessed along with redemption fine, by the competent authority.

3. The appellants thereafter changed their mind and abandoned the goods by making reference to the provision of Section 23(2) of the Act. They filed a refund claim for refund of duty of Rs. 23,242/-. Their claim had been rejected by the authorities below.

4. The contention of the Id. Counsel is that the title to the goods could be relinquished under Section 23 of the Customs Act, by the appellants at any time, before passing of the order under Section 47 of the Act, therefore, their refund claim could not be rejected. But in my view, this contention of the Counsel is misconceived. The order assessing the customs duty payable on the goods and fixing the redemption fine on which goods could be got released by the appellants, amounted to the causing of clearance of the goods by the authority under Section 47 of the Act. It was for the appellants to get the goods released on payment of duty and redemption fine. Therefore, the relinquishment of title to the goods could not be exercised after passing of the above said order regarding duty and redemption fine, under Section 23 of the Act, which specifically enacts that such a right can be exercised by the importer only before the discharge of the goods. Therefore, the refund claim of the appellants on this ground has been rightly rejected.

5. Apart from this, the refund claim of the appellants is also time barred. It was required to be filed within normal time of limitation from the date of payment of duty, but was not so filed. The duty was deposited by them on 15-4-2000, whereas the refund claim was submitted by them on 28-5-2003 much after the expiry of prescribed period.

Therefore, the refund claim deserves rejection on this ground also.

6. Consequently, the impugned order is upheld and the appeal of the appellants is dismissed.