Commissioner of Customs (import) Vs. Pac Systems Pvt. Ltd.

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SooperKanoon Citation : sooperkanoon.com/42207

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-20-2006

Judge : K Kumar

Appellant : Commissioner of Customs (import)

Respondent : Pac Systems Pvt. Ltd.

Judgement :
2. It is seen from the impugned order that the Id. Commissioner (Appeals) has inter alia held that the respondent is seeking the refund of warehousing charges paid by him due to the late decision or wrong decision of the customs. He has held that anything collected by the department which is not due to the department has to be refunded whether there is any specific provisions in the Act or not. He has noted that if the respondent was made to pay the warehousing charges due to delay caused by the department then such warehouse charges can be remitted. He has also recorded that the authorities was not competent to recover the warehouse charges, therefore the original authorities were directed to process the refund of warehouse charges as per the instructions issued by the Board. The Commissioner (Appeals) has also recorded that in his order dated 24.10.2003 he has directed the lower authorities to decide the case within one month from the date of the order but he found the order was passed on 15.4.2004 and dispatched on 22.4.2004 i.e. exactly one year after the order-in-appeal was passed by him. He has recorded that the original authority has not only totally disregarded the direction of the superior quasi-judicial authority which is binding on him but has

also caused tremendous hardship to the respondent who is fighting the case since 1991. The department has filed the appeal mainly on the ground that there is no provision what-so-ever to refund warehousing charges collected by the CWC.3. The Id. Counsel for the respondents has relied on the decision of the Shipping Corporation of India Ltd. wherein the Hon'ble Supreme Court has intemlia held that the carrier/custodian having their right to recover and the innocent importer not being liable to pay. Customs authorities would be bound to bear the demurrage charges in the absence of any provision in the Customs Act.

4. After hearing both sides and perusal of the records and the impugned order, I find that if the respondents has been made to suffer the warehousing charges due to delay or the wrong committed by the department, then the Commissioner (Appeals) has rightly allowed refund of the same and as such I do not find any illegality in the order passed by the Commissioner (Appeals). I, therefore, dismiss the appeal filed by the Revenue.