

Shoreline Infrastructure Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-17-2006

Judge : A T K.K.

Appellant : Shoreline Infrastructure

Respondent : Cc

Judgement :

1. Brief facts of the case are that WBECSC has inter alia imported Electrolytic Copper Cathodes which were sold by them on the basis of a high-sea sale agreement dated 31-5-2004 to M/s. Nu-lite Business Machines Pvt. Ltd. The total quantity involved was 626.55 MT. Nu-lite Business Machines filed In-bond Bill of Entry under Section 59 of the Customs Act, 1962 and the goods were allowed clearance for warehousing and were deposited in a warehouse on execution of double duty bond.

Subsequently, M/s. Nu-lite Business Machines wrote a letter to Customs dated 4-1-05 intimating that they have sold 53.335 MT of Electrolytic Copper Cathodes in three lots to M/s. Shoreline Infrastructure Developers Ltd. and clearance may be allowed to them after payment of all charges including Customs duty and Excise duty. Shoreline Infrastructure Developers Ltd., filed a Bill of Entry for 10.3 MT of Electrolytic Copper Cathodes for clearing the same on payment of duty.

While the Bill of Entry was being processed, a letter dated 14-12-04 was received from the Managing Director, WBECSC stating that they were the original importer

of the goods which had been sold to M/s. Nu-lite Business Machines, as per high sea sale basis agreement dated 31-5-04 but since the buyer has failed to comply with the terms and conditions of the buy and sale agreement and failed to pay cost of other charges, the corporation had initiated legal steps against the defaulter for bouncing of cheques and requested that the goods may not be cleared without their specific concurrence. This was followed by another letter dated 28-1-2004, wherein they intimated the department about the cancellation of high sea sales agreement dated 31-5-04 and a Tripartite agreement had been entered into between them, M/s. Nu-lite Business Machines and entering into another agreement under which M/s. WBECS has been empowered to get the right title of copper and zinc which is still remained under the custody of different agencies like Customs and Custom House Agent in favour of WBECS from the date of the new agreement i.e. 26-1-05. A letter was also received from M/s. Nu-lite Business Machines dated 7-2-05 in which they intimated that in view of the tripartite agreement dated 26-1-05, the right and title of 54 MT of goods sold to Shoreline Infrastructure Developers remained with WBECS and requested that the above stock should not be transferred to anyone without concurrence of WBECS. In the meantime, Shoreline Infrastructure Developers filed another Bill of Entry for clearance of 32.54 MT of Electrolytic Copper Cathodes. Since the clearances were not being allowed to M/s Shoreline Infrastructure Developers, in view of the letter received from WBECS and M/s. Nu-lite Business Machines, M/s Shoreline infrastructure Developers, the present appellant before us, filed a Writ Petition in the Bombay High Court and the High Court directed the Customs authorities to give personal hearing to the petitioners and to pass appropriate reasoned orders, with regard to both the Bills of Entry, within a period of two weeks.

2. Consequent to the Hon'ble High Court's direction, personal hearings were granted to all the three parties i.e. WBECS, Nu-lite Business Machines and M/s Shoreline Infrastructure Developers by the Commissioner.

3. Mr. Ajay Khemka, Managing Director of Shoreline Infrastructure Developers submitted before the Commissioner that M/s. WBECS has no locus standi in the subject matter, as it was understood that the writ petition filed by the Corporation in High Court at Calcutta has been dismissed on 17-3-05 and that M/s. Nu-lite

Business Machines had sold 53.335 MT of Electrolytic Copper Cathodes to them as acknowledged by them vide letter dated 4-1-05, that the subsequent cancellation of sale is null and void and therefore the subject goods should be released to them immediately.

4. Shri B. Chakraborti, Manager of WBECSC stated that because of nonpayment of dues by M/s. Nu-lite Business Machines and other parties, WBECSC was compelled to rescind all the agreements pertaining to high seas sales of zinc and copper and tripartite agreement was entered into on 26-1-05 wherein all the rights and titles in regard to copper and zinc has been restored to WBECSC. He further stated that M/s. Nu-lite Business Machines and M/s. Shoreline Infrastructure Developers have fraudulently entered into an agreement dated 13-8-04 showing sale of 444 MTs of copper cathodes by M/s. Nu-lite Business Machines to M/s Shoreline Infrastructure Developers but on scrutiny of the stamp paper on which the agreement was signed, it was revealed that though the agreement was dated 13-8-04, the non judicial stamp paper was purchased on 4-1-05, which clearly established that the agreement was back dated to circumvent the tripartite agreement entered into on 26-1-05.

5. Mr. M.A. Samad, Director of M/s. Nu-lite confirmed the tripartite agreement dated 26-1-05 and also confirmed the cancellation of high seas sale agreement with retrospective effect. He also confirmed that ownership of the goods remained with M/s. WBECSC as per tripartite agreement dated 26-1-05. It was also stated by him that they had entered into an agreement with M/s Shoreline Infrastructure Developers for sale of the goods and that they have received Rs. 14 lakhs from them but since M/s. Shoreline Infrastructure did not comply with the terms of the agreement with M/s. Nu-lite, they do not have the right or claim on the goods. He further stated that an amount of Rs. 5.00 lakhs out of Rs. 14 lakhs has already been returned and the balance will be returned soon.

6. After hearing all the three parties, the Commissioner held that since M/s. Nu-lite Business Machines has admitted that high seas sale agreement has been revoked and the title of the goods remained with WBECSC and further since M/s. Nu-lite Business Machines have cancelled their agreement with M/s Shoreline

Infrastructure Developers and further since the genuineness of the agreement entered into between M/s Shoreline Infrastructure Developers and M/s. Nu-lite Business Machines was in doubt inasmuch as it was signed on a non judicial paper purchased on 4-1-05, whereas the agreement is dated 13-8-04, he rejected the request of M/s Shoreline Infrastructure Developers for allowing clearance of the goods to them. It is against this order of the Commissioner, that the present appeal has been filed.

7. The Ld. Advocate for the appellant submits that in this case, the goods have been sold by M/s. Nu-lite Business Machines to M/s.

Shoreline Infrastructure Developers, which is not denied by M/s.

Nu-lite Business Machines and even though the agreement was executed on non judicial stamp paper purchased on 4-1-05, the contents of the agreement are not being denied by M/s. Nu-lite Business Machines and the cancellation of agreement by them is arbitrary as they have complied with the terms and conditions of the agreement by them and therefore the agreement cannot be cancelled. It was further submitted that they were not party to the tripartite agreement between M/s.

WBECSC and M/s. Nu-lite Business Machines and another and therefore the same is not binding on them. Once the agreement has been entered into on 13-8-04, any subsequent agreement will become null and void and therefore the tripartite agreement entered into dated 26-1-05 cannot be given effect to. It was accordingly prayed that the goods should be allowed to be cleared to them.

9. I find that in this case the goods were originally imported by WBECSC, who had sold the same on high seas sale basis to M/s. Nu-lite Business Machines and it is M/s. Nu-lite Business Machines who have filed the Into Bond Bill of Entry which was accepted by the Customs and clearance allowed. Therefore, in the records of the Customs, it was M/s. Nu-lite Business Machines who has held out himself to be the importer of the goods which was uncontested at that time and was supported by documentary evidence, regarding their being high seas sale purchaser. Though M/s. Nu-lite Business Machines wrote to the Customs

regarding sale of 53.335 MTs of goods to M/s. Shoreline Infrastructure Developers, subsequently they stated that the sale agreement has been cancelled. Since the Bill of Entry was filed in the name of M/s.

Nu-lite Business Machines, the Customs has to go by the instructions of M/s. Nu-lite Business Machines. The dispute between M/s. Nu-lite Business Machines and M/s. Shoreline Infrastructure Developers regarding non adherence of terms of agreement between the two and the ownership is of a civil nature which cannot be looked into by the Commissioner, nor is the Tribunal empowered to settle a civil dispute regarding ownership of the goods. I therefore hold that no appeal against such an order is maintainable in the Tribunal, as the dispute is of civil nature and no provisions of Customs Act, 1962 or any other allied Acts are attracted or in dispute in the present case. The appellant may approach the appropriate forum for settling the ownership dispute.

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