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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-01-2007

Judge : J Balasundaram, Vice-, A T K.K.

Appellant : Rpg Cables Ltd.

Respondent : Commissioner of Customs

Judgement :

1. The authorities below have rejected the request of importers for relinquishment of title to goods, viz., two cases Triple Cross Head for EXLPE Plant Type 90-150-90/50 with spare parts-1 unit, imported by them on the ground that, since the goods have not been removed from the warehouse before the expiry of the bond period permitted under Section 61, the goods are deemed to have been removed improperly with effect from 15-6-2004 from the warehouse, in the light of the judgment in the case of Kesoram Rayon v. Collector of Customs , and therefore, the importers would be liable to pay duty at the rate applicable on the date of their deemed removal from the warehouse, i.e.

on the date on which the permitted warehousing period/permitted extension period came to an end.

2. We have heard both sides. We find that the provisions of Section 68 dealing with relinquishment of the title are very clear. The Section reads as under - 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, anytime 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.

3. In the present case admittedly no order of clearance for home consumption has been made and, therefore, the importers were entitled to relinquish their title to the goods. The reliance placed by the Commissioner (Appeals) on the judgment of the Bombay High Court in the case of Videocon International Ltd. v. UOI is misplaced for the reason that High Court had no occasion to consider the provisions of Section 68 and was only delivering its judgment on liability of an importer to pay duty under Section 72(b) after expiry of the warehousing period under Section 61. The High Court held that re-export of goods under Section 69 without payment of import duty was not permissible after warehousing period has expired. The Court however, had no occasion to consider whether duty would still be payable even if the title of the imported goods was sought to be relinquished prior to the issue of order of clearance for home consumption. The issue in dispute in the present case is squarely covered by the Tribunal decision in the case of Commissioner of Central Excise v. Garden Silk Mills Ltd. holding that an importer was entitled to relinquish his title to the goods in terms of Sub-section (2) of Section 23 of Customs Act, 1962, even after the expiry of warehouse period, since no order of clearance of the goods for home consumption has been passed. Following the ratio of the above order of the Tribunal and the decision in the case of Technologies Software Pvt. Ltd. v. CC, Bangalore taking the same view, we set aside the impugned order and allow the appeal.

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