

Cce Vs. Chandrawati Polymers Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-13-2007

Reported in : (2007)(122)ECC338

Judge : S Kang, Vice, J T T.K.

Appellant : Cce

Respondent : Chandrawati Polymers Pvt. Ltd.

Judgement :

2. Notice issued to the respondents is received back with the postal remark "Factory Closed". The Revenue filed this appeal against the impugned order whereby the Commissioner (appeals) set aside the demand of duty and interest in respect of the warehoused goods. The case of the Revenue is that respondents made import of certain goods. The importer filed warehousing bill of entry and after the expiry of the period of warehousing, the respondent neither asked for extension of time nor asked for removal of goods on payment of duty. Show cause notice was issued for payment of Customs duty as well as interest. The adjudicating authority confirmed the demand and interest. However, the Commissioner (Appeals) on appeal filed by the importer, set aside the demand on the ground that provisions of Section 61 of Customs Act re to be read with the provisions of Section 28 of the Customs. Hence demand is time barred.

3. The contention of revenue is that there is a procedure prescribed regarding the warehoused goods. Revenue relied upon the provisions of 72 of the Customs Act

which provides that where any warehoused goods had not been removed at the expiry of period during which such goods are committed to be warehoused goods, the proper officer may demand from owner of such goods, and he shall pay the full amount of duty chargeable on such goods, together with penalties interest and other charges.

4. Sub-section (2) of Section 42 provides that in case the owner failed to pay any amount, the proper officer may detain and sell the goods to recover the dues. Section 61 of the Customs Act was amended by Section 107 of Finance Act, 1999 to the fact that where the goods remained in warehouse beyond the prescribed period, the importer is liable to pay interest on the amount from the period from the date of expiry of warehoused goods. The contention is that decisions of the Tribunal were relied upon by the Commissioner (Appeals) for the period prior to the amendment under Section 61 of the Customs Act.

5. We find that the facts of the case are that the importer had not asked for release of the warehoused goods imported by them. The goods remained in the warehouse for a longer period. The revenue is asked for duty as well as interest. We find that Section 72 of the Customs Act is very clear which provides that in respect of the warehoused goods which were not removed from the warehouse after the expiry of the period, proper officer may ask for duty as well as interest and other charges in respect of such goods and if the importer failed to pay such duties, the goods can be sold to recover such amounts. Section 61 which was amended in the year 1999 provides payment of interest also. Therefore, provisions of Section 72 and Section 61 are self-contained provisions.

The case laws relied upon by the Commissioner (Appeals) is in respect of the period when there was no such provisions under Section 61 of the Act on the facts of the present case. Section 28 provides that where duty has not been levied or has been short-levied or erroneously refunded, or when interest payable has not been paid, part paid, erroneously refunded, in such cases, the proper officer may issue notice for recovery. The present case is not a case of duty not levied, or short levied or erroneously refunded. In the present case, the goods were imported, warehoused thereafter the importer after expiry of the warehoused

period, had not come forward to take possession of the imported goods. Provision of Section 28 of the Customs Act is not applicable in such a case. There is no time limit prescribed under Section 61 and 72 of the Customs Act for such release. In view of the above discussion, the impugned order is set aside. The appeal is allowed.

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