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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-31-2007

Reported in : (2007)(121)ECC150

Judge : T Anjaneyulu

Appellant : Cipla Ltd.

Respondent : Commissioner of Customs (import)

Judgement :
2. The appellants being aggrieved by the impugned Order passed by the Commissioner of Customs (Appeals), filed the present appeal. The appellants are one of the largest pharmaceutical manufacturing companies in India. They manufacture drugs/medicines and export them to various foreign countries and they also manufacture goods which are cleared for domestic consumption. The Import and Export Policy provides for duty free import for the purposes of re-export i.e. the goods can be imported from abroad and can be re-exported back, out of the country, in the same condition. The goods which are imported in such circumstances are to be stored in a Custom bonded warehouse and thereafter as and when the appellant company procures an export order, the goods are allowed to be removed from the warehouse and exported out of India against realization of foreign exchange. In the course of such a normal business transaction, it is a common practice that sometimes, foreign buyers either revoke the orders or delay the opening of letters of credit and on such occasions, the goods sometimes remain in the warehouse beyond one year. The appellants applications for

extension of the 4 bonds on 04.08.03, 28.08.03, 28.08.03 and 20.10.03 within the validity period of the bonds, were rejected by the department. The appellants further submits that the Drug Controller vide Order dated 24.9.2001 gave NOC for destruction of the expired goods covered by the aforesaid bonds. The applicants thereupon relinquished their title to the goods covered by the 4 Bonds vide their applications for relinquishment on 29.09.04, 17.12.04, 17.12.04 and 17.12.04 respectively.

3. The Asst. Commissioner of Customs, Bond Department, New Customs House, Mumbai - 01 passed order dated 12.08.05 rejecting the appellants applications for relinquishing title under the provisions of the Customs Act and asked the appellants to pay duty and interest applicable Under Section 72(1) and 62(2) respectively in respect of the subject bonds. Being aggrieved by the Asst. Commissioner (Bonds) Order the appellants filed an appeal before the Commissioner of Customs (Appeals), Mumbai. The Commissioner (Appeals) relying on the Apex Court judgment in the case of Kesoram Rayon v. Collector of Customs, Kolkata as had rejected their appeal without 4 The ld. Advocate for the appellant Shri. S.N. Kantawalla, vehemently argued that the decision in the case of Kesoram Rayon is not applicable and the same is distinguishable from the facts and circumstances of the appellants case. According to him the issue in the present case is covered by the first proviso to Section 68 of the Customs Act whereby the appellants have relinquished the title to the goods before an Order for clearance of the goods for home consumption have been made from the bonded warehouse. The Department has not taken proper cognizance of the Board Circular dated 20th May 2003. He also relied upon the Decision in the case of Mafatlal Fine Spinning and strength of the afore said decision the appellants pray to set aside the impugned orders.

5. The ld. DF simply reiterated the findings recorded by the authorities below and justified the impugned order.

6. The issue in the present appeal to be answered is that where for an abandoned goods title is relinquished after the expiry of bond period is leviable to duty. From the facts of the case it is culled out that the Drug Controller has granted

permission for destruction of the impugned goods in view of the expiry of period. The appellants also have applied for relinquishment of their title in respect of the goods covered by the respective bond. As per the chart shown in the impugned order passed by the Commissioner (Appeals), the date of application for extension of bond period is well within the time. But whereas the Asst.

Commissioner of Customs (Bond Department) has shown the date of application beyond the validity of the bond period. How this discrepancy crept on record is not understood. Both the impugned orders did not take note of the permission granted by the Drug Controller for destruction of the goods as their life period is expired. The authorities below while applying the ratio laid down in the case of Kesoram Rayon (cited supra) demanded duty and interest as per the provisions under Section 72(1) and 61(2) of the Customs Act, 1962 holding that the goods have been cleared on the date of expiry of bond period. In the aforesaid decision of the Apex Court the main question was that of rate of customs duty when goods remained in bonded warehouse beyond the permitted warehousing period or the permitted extended period. In that case the appellant has filed bill of entry for 4832 bales of rayon grade wood pulp for warehousing. They were warehoused on 16th June, 1984 in a private bonded warehouse. Out of these, 4000 were cleared and the matter concerned only with the remaining 832 bales. The period of bond came to an end on 15th September, 1984 under Section 61(1)(b) of the Customs Act, 1962. The contention was put forth by the importer that the rate of Customs duty in force on the date of removal of the said bales from the bonded warehouse was the applicable rate as per Section 15(1)(b) and by virtue of exemption notification, no duty was payable by them. The goods were not cleared from warehouse under Section 68 but were removed by an Order under Section 72. The department contention was that Section 15(1)(b) has no application. Ultimately the Hon'ble Apex Court held that the provisions of Section 68, and, consequently, of Section 15(1)(b) apply only when goods have been cleared from the warehouse within the permitted period or its permitted extension and not when, by reason of their remaining in the warehouse beyond the permitted period or its permitted extension, the goods have been deemed to have been improperly removed from the warehouse under Section 72. In the instant case the facts and circumstances are found different. The appellants have relinquished their title to the goods before order for clearance of the goods for home consumption have been made from the bonded warehouse. Section 68 of the Customs Act reads as follows: Section 68. Clearance of warehoused goods for home consumption. 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 or clearance of such goods for home consumption has been made by the proper officer.

7. Admittedly there is no order passed in the present case for clearance of the goods for home consumption. In the similar set of facts and circumstances the Division Bench of this Tribunal in the case of RPG Cables Ltd. v. CC (Imports), Mumbai 2007 (212) ELT 538 (Tri. - Mum) held that the importer is entitled to relinquish his title to goods in terms of Section 23(2) of Customs Act, 1962 even after expiry of warehousing period - Section 68 ibid. The Tribunal has followed various other decisions and also referred Kesoram Rayon. Sub Section 2 of Section 23 of the Customs Act, 1962 deals with "the owner of any imported goods may, at an time before an order for clearance of goods for home consumption under Section 47 or an order for permitting the deposit of goods in a warehouse under Section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon." 8. Further it appears that the authorities below had not taken cognizance on both Circular No. 42/2003 - Cus dated 20.5.2003 and Section 68 of the Customs Act which clearly specifies that "provided that the owner of any warehoused goods may, at any time 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." Admittedly as stated supra there was no order passed for clearance of the goods for home consumption. Therefore, the appellants have right to relinquish their title to the impugned goods even after expiry of bond period before passing an order for clearance for home consumption. The aforesaid citation rendered by the Divisional bench is squarely applicable to the present case. Therefore, the impugned orders

are liable to be set aside. In the result appeal is allowed while setting aside the impugned orders.