Dalal Consultant and Engineers Vs. Collector of Customs

Dalal Consultant and Engineers Vs. Collector of Customs

SooperKanoon Citation : sooperkanoon.com/4723

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-30-1988

Reported in : (1989)(20)ECC36

Appellant : Dalal Consultant and Engineers

Respondent : Collector of Customs

Judgement :
1. Briefly, the facts are that appellants claimed refund of duty on reimport of three consignments of goods of Indian origin, which had been exported for execution of a project in Iraq. The goods, however, arrived after the expiry of 3 years' time limit as provided under Section 20 of the Customs Act, 1962. In view of the special circumstances, the Government of India granted an ad hoc exemption on 23-2-1985 in respect of the goods, the date of import of which was 17-7-1984. This exemption was granted in exercise of powers conferred by Sub-section (2) of Section 25 of the Customs Act, 1962 read with Sub-section (4) of Section 36 of the Finance Act, 1984. The exemption was granted subject to the condition that the Collector of Customs, Bombay was satisfied that the conditions of duty free import of Indian origin materials/equipment/machinery in question under Section 20 (a)(d) of the Customs Act were fulfilled in all respect except for the period of re-import not being within 3 years from the date of their export, that the re-imported goods were covered by a valid ITC licence/CCP, that no drawback or export assistance of any kind had been enjoyed on export of the said goods and that in case such drawback etc.

had been availed of, it should be refunded to the Government and finally, the Collector of Customs (Appeals) was satisfied that the equipment/machinery and cargo were of Indian origin.

The Assistant Collector of Customs, Refund Department, Bombay Customs House rejected the refund claim of the appellant on the short ground that the exemption issued by the Government under Section 25 (2) of Customs Act, 1962 could not be applicable with retrospective effect and that since the ad hoc exemption order was issued after the clearance of goods, it was not valid for covering the claims of the appellant.

When the appellant went up in appeal before the Collector of Customs (Appeals), this order of the Assistant Collector was upheld. It is against this order of Collector (Appeals) that the appellants are now before us.

2. We have heard Shri A.S. Narayan Iyer, Import Export Officer of the appellant company and Shri C.V. Durghayya, JDR, for the department.

3. So far as the point of law involved in this issue is concerned, the position is well settled as a result of the Delhi High Court decision in the case of Dr. Hari Vishnu Pophale v. Union of India - ILR (1981) No. 1 DEL 514, Madras High Court decision in the case of Indian Leaf Tobacco Development Company Ltd. and ITC Ltd. v. Collector of Customs and Ors. - 1984 (16) ELT 234 and the decisions of this Tribunal in the case of Food Corporation of India v. Collector Customs, Bombay - 1985 (21) ELT 128 and in the case of Hindustan Copper Limited, Calcutta v.Collector of Customs, Calcutta - 1987 (31) ELT 809. In the light of these case law, it is well accepted that Section 25 (2) of the Customs Act does not impose any restriction on the Central Government as to the time when it should grant the exemption. Even in cases when Customs duty had been collected, it is open to the Central Government, in exercise of powers under Section 25 (2) ibid, to grant exemption and refund the duty.

4. Accordingly, we hold that in this case also the ad hoc exemption order, though issued after the importation of the goods and the payment of duty thereon is legally valid to cover the claim subject to satisfaction of the conditions prescribed

in the relevant ad hoc exemption order.

5. We, therefore, allow this appeal and remand the matter to the Assistant Collector who should decide the claim of the appellant after duly applying the ad hoc exemption order issued by the Central Government on due satisfaction of the conditions specified in the said ad hoc exemption order.