Garware Nylons Limited Vs. Collector of Customs and C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-12-1989

Reported in : (1989)(43)ELT307Tri(Mum.)bai

Appellant : Garware Nylons Limited

Respondent : Collector of Customs and C. Ex.

Judgement :
1. This is an appeal directed against the order of the Collector of Customs (Appeals) bearing No. S/49-556/83-M, dated 26-4-84.

2. The brief facts of the case for the purpose of this appeal can be stated as below: The appellants have a bonded warehouse at Pimpri situated in their factory premises. They import raw materials at Bombay Port and transfer the goods under bond to their bonded warehouse at Pimpri, from where the goods are cleared on payment of duty on filing exbond bills of entry. In the case of one such import covering the manifested quantity of 49.275 kgs. of polyamide chips a shortage of 419.500 kgs. was noticed during the survey conducted at Bombay before the removal of the goods to Pimpri. All the same the entire quantity manifested was shown as removed and duty was paid at Pimpri.

3. Thereafter a refund claim was filed before the Asstt. Collector (MCD), Bombay Custom House seeking for refund of duty paid on the shortages. This claim has been filed within time. However, after a lapse of nearly five months the Asstt. Collector (MCD) rejected the claim on the ground that the duty had been paid at

Poona Central Excise Collectorate and the claim should have been filed with the Central Excise Collectorate, Poona and therefore the claim is not sustainable.

No appeal against the said order has been filed by the appellants.

However, they submitted another refund claim to the Asstt. Collector, Pune on 15-5-1982 which was rejected by the Asstt. Collector, Pune on the ground of time bar, under Section 27 of the Customs Act. The appellants went in appeal against this order of the Asstt. Collector, Pune. The Collector (Appeals) confirmed the order of the Asstt.

Collector, Pune and rejected their appeal. The present appeal before the Tribunal is against the impugned order of the Collector (Appeals).

4. Shri Kinikar, secretary of the appellants' company contended that they had filed the refund claim within the time limit before the Asstt.

Collector (MCD), Bombay Custom House on account of their bona fide impression that since the shortage was noticed at Bombay, the claim should be processed and adjudicated by the Bombay Custom House. If the Asstt. Collector (MCD), Bombay had felt that he was not the competent officer to sanction the refund, he should have returned the refund claim with-direction to the appellants for presentation it before the appropriate authority well within the time. On the contrary after nearly five months the Asstt. Collector (MCD) Bombay asked for additional documents and after submission of the documents on 26-11-1983 he rejected the appellants' refund claim. They had, therefore, re-submitted the refund claim to the Asstt. Collector of Customs & Central Excise, Pune. The Asstt. Collector has not appreciated the fact that the claim was earlier presented well within the time before the Asstt. Collector (MCD), Bombay but reckoned the date of filing the refund claim only from the date on which he received it and rejected the claim on grounds of time bar. The Collector (Appeals) has not appreciated this fact. His observation that the appeal has not been filed against the order of the Asstt. Collector (MCD), Bombay, is also not tenable because in an another similar case, where the appellants had approached the Collector (Appeals), that authority had rejected their appeal on the ground that the duty was not paid in Bombay

Custom House but at Pune.

5. Shri Arya, appearing for the department supported the order. Though he conceded that the Asstt. Collector (MCD) should have returned the claim to the appellants so that the same could be presented before the appropriate authority, he contended that the appellants have not chosen to go in appeal against that order. The issue for consideration before the Tribunal is only the rejection order of the Asstt. Collector of Central Excise, Pune and the appeal of the Collector (Appeals) thereon.

Hence in this view of the matter, the Asstt. Collector of Central Excise, Pune is statutorily bound by the limitation prescribed under Section 27 of the Customs Act and there is no infirmity either in his order or in the order of the Collector (Appeals).

6. Shri Kinikar also referred to the decision of the Appellate Collector of Customs, Bombay reported in 1980 ELT page 658 wherein it has been observed that a claim for refund presented to the Asstt.

Collector of the Appraising Group within time cannot be treated by Asstt. Collector, Refunds as time barred with reference to the date of receipt of papers in his section. He, therefore, argued that on the basis of this decision the date on which refund claim was presented before the Asstt. Collector (MCD), Bombay should be taken as claim within the time limit.

7. After hearing both the sides and perusing the available records, I observe that the Asstt. Collector (MCD) has taken his own time and rejected the claim as not falling within his jurisdiction. He could have returned the refund claim to the appellants for presentation before the appropriate authority. Hence, the appellants should have agitated the matter before the Collector (Appeals) by filing an appeal against that order. On this ground itself they would have got a specific direction from the Collector (Appeals) with regard to the presentation of the claim or transmission of the claim to the appropriate authority. This has not been done by the appellants.

However, they, on their own, submitted another refund claim to the Asstt. Collector of Central Excise, Pune which has been rejected as time barred under Section 27 of the Customs Act. The decision of the Collector (Appeals) referred to by the appellants is with regard to the presentation of the claim in one section of the Custom House rather than in another sec- . tion. In this case, the issue involved related to two different Collectorates, where the payment of duty has been made. Each Assessee is expected to know that he can seek for refund of duty paid only from the Collectorate, where the payment has been made.

Hence, their claim before the Asstt. Collector (MCD) was obviously wrong and if the Asstt. Collector of Customs (MCD) had delayed return thereof, they should have agitated against that order and not against this order of the Asstt. Collector of Central Excise Pune who rejected the claim as time barred. Shri Kinikar also contended that since the duty has been paid by mistake of law, the department is bound to return the refund claim. In this context, I observe that the remedy of this ground is to be sought for elsewhere. The Tribunal is the creature of law and it has no power to condone or extend the statutorily laid down limitation under Sec. 27 of the Customs Act. In this view of the matter, I see no merit in this appeal and accordingly I reject the same.