General Manager, Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-24-1983

Reported in : (1983)(14)ELT2392TriDel

Appellant : General Manager,

Respondent : Collector of Customs

Judgement :

1. The question for decision in this appeal, originally filed as Revision Application to Government of India, is the correctness or otherwise of appellants' claim for refund on the ground that the imported goods were assessable at preferential rate of duty being of United Kingdom origin.

2. The Assistant Collector of Customs, Madras by his order dated 24-4-1980 rejected the claim on the ground that the claimant had not produced the country of origin Certificate within 6 months from the date of payment of provisional duty. From the order dated 9-7-1980 passed by the Appellate Collector of Customs, it appears that he did not accept the photostat copies of invoices containing country of origin certificate produced by the appellants for assessing the imported goods at preferential rate of duty. He held that country of origin certificate not having been produced within the specified time-limit preferential rate of duty could not be applicable to the goods imported. He accordingly rejected appellants' claim, hence the present appeal.

3. The appellants have contended that alongwith the claim for refund, photostat copies of invoices containing the country of origin certificate were filed before the Assistant Collector of Customs, who did not accept the photostat copies and insisted upon the original for the purpose of signature. The goods were imported in instalments and with respect to some instalments photostat copies were earlier accepted by the Customs authorities. After the Order-under-appeal, photostat copies have been accepted in respect of two instalments by the Appellate Collector of Customs, Madras by two orders 2-8-1980 and 18-11-1980, (photostat copies of the orders filed). It is also urged that the appellants were able to obtain the United Kingdom origin certificate having original signature though after the expiry of time-limit of 6 months.

4. At the hearing, Sh. R. Gururawji, Assistant Engineer represented the appellants and Sh. M. Chaterjee, Departmental Representative represented the respondent Collector. They were heard.

5. It is seen that appellants before the Assistant Collector of Customs while making the claim had filed photostat copies of the original invoice containing U.K. Origin certificate. Under Illustration (a) of Section 63 of the Evidence Act, 1872 'a photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original'. In the absence of any circumstance to suspect the photostat copy, the same should have been accepted for the purpose of the claim made by the appellant. Besides, from the orders produced before us it is seen that the same Custom House with respect to some other instalments of the same goods has been accepting photostat copies for the purpose of assessing the goods at preferential rate of duty. Unless there was any circumstance making the photostat copy suspicious we see no reason why the photostat copies produced by the appellants should not have been accepted for the purpose of assessing the goods at preferential rate of duty and granting refund to the appellants. The appellants are Department of Government of India and the photostat copies of Invoices produced by them cannot be said to be suspicious.

6. In view of the foregoing, we direct that photostat copies of Invoices produced by the appellants should be accepted, for the purpose of assessing the imported goods at preferential rate of duty if otherwise in order. The order-in-appeal is accordingly set aside and the matter is, therefore, remanded to the Assistant Collector of Customs, Madras for disposing of the appellants' claim in accordance with law and observations made and directions given above.