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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-11-1994

Reported in : (1994)(72)ELT724TriDel

Appellant : Duphar Interfran Ltd.

Respondent : Collector of Customs

Judgement :
1. M/s. Duphar Interfran Ltd. have filed this appeal against the order of Collector, Customs. The Collector of Customs in his order held that :- "However, the facts and circumstances clearly establish that the goods are mis-sent to India. I, therefore, take a very lenient view and allow re-export of the goods as claimed in the Bill of Entry on a token redemption fine of Rs. 35,000/-." 2. Briefly stated the facts of the case are that on 4-7-1992,134 packages (2280 kgs Gross weight) of 6 Amino Pencillanic Acid from Russia landed into India at I.G.I. Airport, New Delhi. The appellant submitted that the goods were not meant for the appellant's branch in India but for the appellant's branch in U.K. The sender intimated the Collector Customs, I.G.I. Airport, New Delhi on 22-7-1992 that the goods were shipped by the sender in error to the appellants on account of communication gap; that the goods were destined for United Kingdom.

As the goods had been imported into India, the ld. Collector confiscated the goods and allowed them to be re-exported on payment of a redemption fine of Rs. 35,000/- 3. Shri Sandeep Jain, the ld. Advocate appearing for the appellant submitted that the Hon'ble Delhi High Court in the case of Trilochan Singh v Union of India and Ors., reported in 1981 (8) E.L.T. 667 observed that unless the goods are brought into the country for the purpose of use, enjoyment, consumption, sale or distribution so that they are incorporated and got mixed up with the mass of the property of the country, they cannot be said to have been imported; that importation can be said to have taken place when they have crossed the Customs barrier. Citing another judgment of the Hon'ble Delhi High Court in the case of Great Eastern Shipping Co. Ltd. v. Union of India, reported in 1986 (25) E.L.T. 171, the Hon'ble High Court of Delhi again agreed with the view taken in the case of Trilochan Singh v. Union of India as cited supra holding that import does not take place when the goods enter the customs frontier, i.e., the territory or territorial waters of India otherwise all goods that touch the Customs port will be liable to customs duty. Going further, the ld. Advocate cited the case of Shew Bux Rai Onkar Mall v. Asstt. Collector of Customs and Ors., reported in 1981 (8) E.L.T. 298 in which the Hon'ble Calcutta High Court held that though Section 2(23) of the Customs Act, 1962 defines the word 'import' as bringing into India from a place outside India, the words 'imported into India' have a wide meaning which is apparent from Section 111(d) of the Act; that Section 111(d) makes a distinction between the goods which are imported or attempted to be imported or are brought within Indian Customs waters for the purpose of being imported.

Therefore to give the words their literal meaning would lead to an absurdity because a person may bring goods into India by ship and may re-export them without clearances or an aircraft landing in any airport with goods in the course of transit may not seek customs clearance and such goods will not be chargeable to customs duty. Relying on the above citations, the ld. Counsel for the appellant submitted that in the instant case, import did not take place at all; that Section 111(d) of the Customs Act, 1962 speaks of 'confiscation of improperly imported goods etc.; that the words 'imported goods' are of crucial importance; that if import did not take place the question of confiscation does not arise; that Section 125 of Customs Act, 1962 speaks of the option to pay fine in lieu of confiscation; that natural corollary to this is that if the goods cannot be confiscated no fine can be imposed; that the ld. Collector accepted the appellant's contention that the goods had been mis-sent to India i.e., they were not imported into India and were not meant for the purpose of use, enjoyment, consumption, sale, distribution etc.; that despite this, the ld. Collector has confiscated the goods and has allowed the re-export and imposed a redemption fine of Rs. 35,000/-; that in the case of Padia Sales Corpn. v. Collector of CMS., reported in 1992 (61) E.L.T. 90, on similar grounds the Addl.

Collector by his order confiscated the goods for the contravention of provisions under Import and Export Control Act as well as Customs Act.

He permitted the importer to re-export the goods on payment of token redemption fine of Rs. 35,000/-; that the Tribunal held that the Adjudicating Authority has no power to impose redemption fine while permitting re-export of the goods; that the Tribunal further held that the order passed by the Addl. Collector is not correct and was therefore modified. Relying on the judgment of the Hon'ble Supreme Court in the case of Sewpujanrai Indrasanrai v. Collector of Customs, reported in 1983 (13) E.L.T. 1305 (SC) in which it was held that in case option in lieu of confiscation is given, imposition of conditions for release of goods is illegal.

Relying on the judgment of the Tribunal in the case of Scantrons Pvt.

Ltd. v. Collector of Customs, New Delhi, reported in 1994 (70) E.L.T.635 (Tri.), the ld. Counsel for the appellant submitted that the Hon'ble Tribunal had held : "When the goods are confiscated because of any ITC prohibition in terms of Section 111(d) of the Act and an option to pay fine in lieu of such confiscation is given an effect of such option is to lift the prohibition. In other words, the importer/appellant is entitled to import the goods and to consume them within the country on payment of such redemption fine, therefore simultaneously imposition of two conditions, namely, imposition of fine in lieu of confiscation and directing re-export cannot go together. In view of this legal position, the appellant is entitled to refund of Rs. 71,250/- on account of redemption fine paid by him if the goods have already been reported." Summing up his arguments, the ld. Counsel for the appellant submitted that there was no case made out against the appellant and therefore prayed for setting aside the order of confiscation and imposition of redemption fine.

4. Shri V.K. Sharma, the ld. SDR appearing for the Department submitted that the cases cited and relied upon by the appellant can be easily distinguished. In regard

to the case reported in 1981 (8) E.L.T. 667, he submitted that the facts in the case were different and pertained to baggage and not to the import cargo; that in the case decided by the Hon'ble Calcutta High Court and relied upon by the appellant, the Hon'ble Calcutta High Court had observed that it cannot be said that the goods imported into India would mean that the goods had landed at the International Airport and thus the facts were different.

Distinguishing the case relied upon by the appellant in the case of Great Eastern Shipping Co. reported in 1986 (25) E.L.T. 171 wherein the Hon'ble Delhi High Court had held that import does not take place when the goods enter the customs frontier, i.e., the territory or territorial waters of India and thus the facts of the present case were different from the facts of the case relied upon by the appellant. He submitted that the case decided by the Tribunal in the case of Padia Sales Corpn. v. Collector of Customs, reported in 1992 (61) E.L.T. 90 was more than appropriate in the circumstances and the facts of the present case. He submitted that in this case, the Addl. Collector had allowed the importer to re-export the goods on payment of token redemption fine of Rs. 35,000/-. In this case, the Tribunal modified the order of Addl. Collector in the following manner :- "The goods are confiscated but the appellants are entitled to redeem the same on payment of fine of Rs. 35,000/-." The ld. SDR placed on record an Order No. 1695/93-WRB, dated 20-9-1993 1994 (72) E.L.T. 392 (Tri.) stating that imposition of redemption fine was valid as held by the Hon'ble Tribunal. In that case the ld. Counsel for the appellant (Importer) had argued that fine for redemption of shipment was excessive, the Tribunal held "But when the Collector has offered redemption, it has to be real having regard to the value of the goods shipped. Hence such a fine for re-export should not exceed the C.I.F. value of the goods, etc." 5. Summing up the ld. SDR submitted that in view of the order of the Hon'ble Tribunal, the order of the ld. Collector in regard to confiscation and further allowing the appellant to redeem the goods for re-export was valid in law.

6. Heard the submissions of both sides and considered them. I have also perused the ratio of the decisions cited and relied upon by the appellant and the respondent. I find that the Hon'ble Delhi High Court had made observations on the interpretation of the words 'imported into India' as they figure in Section 2(25) of

the Customs Act, 1962. In the instant case before me, I find that the Collector had confiscated the goods holding that the goods had arrived in India in violation of ITC requirement as they were borne in the negative list. The emphasis of the arguments of the ld. Counsel for the appellant was on the word 'import' arguing that the goods had come into India and the fact of their being sent by mistake was accepted and that the goods had not left the customs barrier and had not mixed up with the general mass of goods and therefore import of the goods was not complete as held by the Hon'ble Delhi High Court.

7. Let me first examine the scope of the word 'Import' under Section 2(23). The ld. Advocate for the appellant cited and relied upon a lot of case law as mentioned in the preceding paragraphs. I find that there is case law supporting the view that import is complete in the circumstances mentioned in the case, relevant extracts whereof are reproduced below :- (a) Decision of Bombay High Court in the case of Apar Private Ltd. and Ors. v. Union of India & Otters 1985 (22) E.L.T. 644 (Bom) "The combined effect of the words 'Import' and 'India' under Sections 2(23) and 2(27) of the Customs Act, is that import can be said to take place as soon as goods are brought into the territorial waters of India. The taxable event occurs when, as laid down by Section 12, goods are imported into India. Since 'India' includes its territorial waters, the taxable event occurs no sooner than the goods enter the territorial waters of India and does not postpone till they are actually off-loaded on the land mass or till the goods are valued under Section 14 or till the date for determining the rate at which the customs duty should be levied under Section 15 arrives. Even though, the word 'levied' has several meanings viz.

chargeability, valuation, determination of duty or tax and/or recovery of the same, there is nothing in the Customs Act which indicates that the chargeability stands suspended until a Bill of Entry is presented or until the goods are valued and duty payable is ascertained. From the moment the goods are 'Imported', goods continue to be imported goods, as defined in Section 2(25), until they are cleared for home consumption. In other words, they acquire the character of imported goods within the meaning of Section 12 no sooner than they enter the territorial waters of India and thus become subject to the levy of customs duty." (b) Hon'ble Madras High Court in the case of K. Jamal Co. v. Union of India, reported in 1981

(8) E.L.T. 162 held that: "On a careful consideration of the above, I am of the view that the stand of the respondent is unassailable. The definition of 'Import' is contained in Section 2(23) stating that 'Import' with its grammatical variations and cognate expressions, means bringing into India from a place outside India. 'Bringing into India' obviously would mean the clearance of the goods under Section 15." Further discussing the Hon'ble Madras High Court's judgment in the case of K.R. Ahmed Shah v. Addl. Collector of Customs, reported in 1981 (8) E.L.T. 153 (Mad.) the Hon'ble Madras High Court held that :- "The principles that can be deduced from above decision can be summarised as follows :- (1) Goods can be said to be imported to the country only when they are incorporated in and mixed up with the mass of the goods in the country; (2) It cannot be said that the moment an aircraft lands at the International Airport in this country the goods are imported and to hold otherwise would create inconvenience and confusion and would refer the goods which are in the aircraft meant to be carried to other countries subject to the customs laws in this country." (c) Hon'ble Calcutta High Court in the case of Indian Rayon Corporation v. CC, reported in 1987 (27) E.L.T. 626 held : "In my judgment, this contention of Mr. Roy Choudhary has sufficient force in it. It is true that in view of the definition of 'India' as given in Section 2(27) of the Customs Act, importation takes place as soon as the goods enter the Indian territorial waters, but though the importation is complete at that point of time, the imported goods in view of the definition given under Section 2(25) retain their character as such till the date of their clearance for home consumption."Aluminium Industries Ltd. v. Union of India, reported in 1984 (16) E.L.T. 183 (Ker.) held that :- "The charge under the Section 12 is on 'imported goods'. Though the Section uses the expression 'goods imported into India' Sections 13,15, 17 and many other relevant provisions show that the legislative intention is to impose customs duty on 'imported goods', as defined in Section 2(25). Under the definition clause, the goods retain the character of 'imported goods' till they are cleared for home consumption for the purpose of Sections 46 or 68." Thus the word 'import' and 'imported goods' have been defined in different words by different High Courts. But the underlying spirit is the same. It can be said that 'import' means bringing into India and filing documents indicating the particulars of goods brought into India.

8. Further the ld. Advocate relied on the judgment of the Hon'ble Calcutta High Court in the Shew Bux Onkarmal case reported in 1981 (8) E.L.T. 298. The Hon'ble Calcutta High Court held that: "words 'imported into India' have a wide meaning which will also be apparent on reference under Section 111(d) of the Act which makes the distinction between the goods which are imported or admitted to be imported or are brought within Indian customs waters." As against this there are judgments of Hon'ble High Courts which are more specific in defining import and imported goods. I hold that the import of the goods was complete, the moment the aircraft landed at the airport and the Import General Manifest was filed by the Captain of the Aircraft or his authorised representative.

8A. Now coming to the second proposition that was pressed before me which was that Section 125 of the Customs Act, 1962 speaks of the option to pay the fine in lieu of confiscation and that a natural corollary to this will be that if the goods cannot be confiscated, no fine can be imposed. From the findings of the ld. Collector, I find that the goods were listed in the negative list and required a specific licence. As no specific licence was produced by the importer or his authorised agent, their confiscation under Section 125 of the Customs Act, 1962 was legal and valid.

9. Coming to the third proposition that once the goods were permitted to be exported there was no question of imposition of the redemption fine.

10. On confiscation, property in the goods vests in the Govt.

Therefore, nobody has any right to deal with such goods. In order to allow the importer to deal with the goods, Section 125 of the Customs Act, 1962 provides that it is a discretionary power vested in the Adjudicating Officer to allow redemption of the goods on payment of some fine. In the instant case, as the goods were confiscated by the ld. Collector and the ld. Collector had discretionary power to redeem the goods on payment of fine, he allowed that option after taking all the relevant factors into consideration.

11. The next proposition of the appellant that in case export is permitted, redemption fine cannot be imposed. In support of this contention, the appellant

had relied upon the decision of the Tribunal in the case of Padia Sales Corpn. v. Collector of Customs where it was held that no condition to re-export can be imposed if redemption is allowed. On the question of imposition of condition, the Hon'ble Supreme Court in the case of Sewpujanrai Indrasanrai v. Collector of Customs 12. In the instant case, I find that the ld. Collector had imposed an invalid condition of re-export of the goods. Having regard to the observations of the Hon'ble Supreme Court as reproduced above as also the decision of the Tribunal in the case of Padia Sales Corporation, I find that the view taken in the aforesaid decision of the Tribunal that Adjudicating Authority has no power to impose redemption fine while permitting re-export of the goods is correct. I also find that in view of the Hon'ble Supreme Court's observations that if the condition imposed is severable, then the order can be modified. Accordingly the order passed by the ld. Collector to that extent is not correct. Hence the impugned order requires to be modified as it was done in the case of Padia Sales Corpn. I, therefore, modify the order of the ld.Collector in the following manner :- "The goods are confiscated, but the appellants are entitled to redeem the goods on payment of fine of Rs. 35.000/-." 13. As regards re-exportation of the goods, the imposition of redemption fine validates the import as soon as they become an absolute owner of the goods on payment of redemption fine, they are free to export the same subject to the provisions of the Customs Act, 1962 and they are permitted to re-export accordingly.