Best and Crompton Engineering Vs. Collector of Customs, Madras

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Court : Chennai

Decided On : Feb-28-1997

Reported in : 1997(93)ELT21(Mad)

Judge : Raju and; V. Kanakaraj, JJ.

Appeal No. : Reference Case Nos. 13 & 14 of 1985

Appellant : Best and Crompton Engineering

Respondent : Collector of Customs, Madras

Advocate for Def. : Shri S. Veeraghavan, ACG (S.C.)

Advocate for Pet/Ap. : Shri K. Ilias Ali, Adv.

Judgement :

D. Raju, J.

1. The above references have been made under Section 130(1) of Customs Act, 1962, at the instance of the respective applicants-Collector of Customs, Custom House, Madras, referring the following question of law for our consideration and decision :

'Whether in the facts of circumstances of the case, the cancellation of the 'Out of Customs charge' Order given under Section 47 of the Customs Act, 1962 can be considered to be not a valid one as held by the Department'.

2. So far as R.C. 13 of 1985 is concerned, the applicants appear to have imported 1000 MT of Nickel by the vessel M.V. John which arrived at Madras Port in December, 1979. There appeared to be some disputes in respect of the goods under Open General Licence and the Deputy Collector of Customs who confiscated the goods in adjudication proceedings appears to have allowed clearance on the payment of a fine of Rs. 25,000/-. The applicants paid the fine and duty levied on the entire consignment on 7-10-1980. After the payment of duty, the applicants obtained 'Out of Charge' order on the Bill of Entry from the Proper Officer viz., Deputy Office Superintendent, Accounts Department, under Section 47 of the Customs Act, 1962, in respect of the goods already examined in the dock.

3. Subsequently the applicants on inspection of the consignment in the docks, seem to have found the packages in a damaged conditions and suspected damages and requested the Customs Department and obtained an 'Open and Inspection' order from the scrutinising Appraiser of the concerned assessment group in the Customs House. When this order was shown to the proper officer who had issued the 'out of charge' order earlier with a view to cancel the same to enable them to hold a survey, the proper officer cancelled the signature in the Bill of Entry and attested the same. But when the applicant requested for examination of the packages by their letter dated 27-10-1980, the Assistant Collector refused permission. The applicants in such circumstances, relying upon the Lloyd's surveyors representative, who appears to have independently confirmed the shortages, filed a claim under Section 13 of the Customs Act, 1962 for refund of excess duty paid as shortage were found by the Surveyors. The Assistant Collector of Customs by his letters dated 6-7-1981 and 4-8-1981 rejected and refund claim. The appeal filed thereon, before the Appellate Collector of Customs also failed and the appeal was rejected by an order dated 13-3-1983 as against which this matter was pursued before the Tribunal under Section 129(1) and the Tribunal also concurred with the orders of the Authorities below and dismissed the appeal by its order dated 27-10-1984. It is only thereafter the applicants moved the Tribunal for a reference to this Court on the question of law noticed supra.

4. So far as R.C. 14 of 1985 is concerned the applicants in this case also imported 1000 MT Nickel by the vessel S.S. Nodalloyd Weser which arrived at Madras Port in December, 1979. As in the other case there appears to be some dispute in respect of the import of the goods under the Open General Licence resulting in the Deputy Collector of Customs order of confiscation with liberty to clear the goods on payment of fine of Rs. 25,000/-. The applicants paid the fine and duty levied on the entire consignment on 7-10-1980 and after such payment of the duty the applicants obtained a 'out of charge' order on the Bill of Entry from the proper officer viz., The Deputy Office Superintendent, Accounts Department under Section 47 of the Act in respect of the goods already examined in the docks.

5. As in the previous case the applicants herein also on inspection of the consignment in the docks found the packages in damages condition and suspected shortage and requested the Customs Department for a survey and obtained an 'Open Inspection Order' from the scrutinising Appraiser of the concerned assessment group in the Customs House. When this order was shown as in the other case the Proper Officer appears to have issued the 'Out of Charge' order earlier, cancelled the signature in the Bill of Entry and attested the same. Based on the above, when the applicant requested the Assistant Collector of Customs by their letter dated 27-10-1980, the permission was refused. The Lloyds Surveyors independently appears to have confirmed the shortages in their report and based on the same the applicants filed in claim under Section 13 of Customs Act, 1962, for the shortages as found by the Surveyors. The Assistant Collector of Customs rejected the claim for refund by his letter dated 6-7-1981 the appeal filed before the Appellate Collector of Customs also came to be rejected by an order dated 13-5-1983. The further appeal before the Tribunal was also rejected on 27-10-1984. Hence, the above reference of the same question of law has been referred as in the earlier case.

6. The counsel for the applicants strenuously argued that the Proper Officer who has made the earlier 'Out of Charge' order has cancelled his signature subsequently and therefore it should not be viewed that there was no 'Out of charge' order in existence and it was not open to the authorities either revoke or cancel the cancellation order so as to restore the 'Out of Customs Charge' order.

The endeavour of the counsel for the applicants in substance was that an impression has been attempted to be created before the Tribunal that the Proper Officer was right or that he had the necessary power or authority to cancel his earlier 'Out of charge' order originally made under Section 47 and no exception could be taken by the Department to the same or such order could be ignored in adjudicating on the claim for refund presented under Section 13 of the Act. The counsel for the respondent Department adopted the reasons assigned by the Authorities below and also the reason given by the Tribunal and contended that the view taken by the Authorities are not in any manner vitiated to warrant the interference of this Court and the question referred to has to be answered in favour of the Department.

7. We have carefully considered the submissions of the learned counsel appearing on either side. The question that is before us and stands referred to us is not very much on the relative scope of Sections 13 and 23. Therefore, we are not obliged to advert to the said aspect to consider or render our opinion in this regard. On the other hand the only question that stood referred to us is the nature and character of an order passed under Section 47 of the Customs Act, 1962, and the authority or the competenance of the said Officer who once passed an order to review or cancel the same. Section 47 as it stood at the relevant point of time reads as follows :-

'(1) Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption.'

(2) Where the importer fails to pay the import duty under sub-section (1) within seven days from the date on which the bill of entry is returned to him for payment of duty, he shall pay interest at such rate, not below twenty percent and not exceeding thirty percent per annum, as is for the time being fixed by the Board, on such duty till the date of payment of the said duty :

Provided that where the bill of entry is returned for payment of duty before the commencement of the Customs (Amendment) Act, 1991 and the importer has not paid such duty before such commencement, the date of return of such bill of entry to him shall be deemed to be the date of such commencement for the purpose of this section.'

Section 154 enables the authorities under the Act specified therein to correct clerical or arithmatical errors or error from accidental slip or omission. Section 129D empowers the Board or the Collector of Customs to suo motu call for the examine any proceedings for the purpose of satisfying itself or himself as to the legality or propriety of any such decision or order made by the collector of appeals or the adjudicating authority as the case may be. The order passed under Section 47 of the Act permitting clearance brings about certain inevitable consequences in law with certain mutual obligations and rights both for the Department and for the importer. In passing an order under Section 47, the proper officer is obliged to verify whether the goods said to be imported correspond to the description in the licence and whether the conditions imposed in the licence and reported to be complied with by the importer, have been complied with by the importer and if it is found that the above aspects are in the affirmity the Customs Officer is bound to allow the goods on payment of duty. In this case initially the adjudicating authority found that the import was in contravention of the provisions of the Act and while ordering confiscation has allowed clearance on payment of the fine and it is only on payment of such fine and the duty, order or endorsement under Section 47 came to be made. The exercise of power under Section 47 either way has the consequences of conferring or denying rights to a citizen and correspondingly certain rights or obligations vest with the Department. An exercise of power with such consequences has necessarily to be viewed as a quasi-judicial exercise of power and in the absence of any specific provision or power conferred upon such officer to review or alter or cancel the said order, the proper officer empowered to exercise power under Section 47, cannot be said to possess any such power and no such power could be considered to in here in him by mere inference. Any error in such exercise may apparently be amenable for correction by the authorities higher in the hierarchy under any-one or other provisions but it is not given to the every officer or authority to go back on the order earlier passed, particularly as noticed above, when there is not specific provision enabling him either to review the said order or alter or vary the same Section 154 cannot help the authority to pass such an order as has been made in this case. If that be the legal position, that the proper officer who has once exercised his power under Section 47 cannot retract and retrace his steps or review the position or alter or cancel the order earlier made, the so called subsequent cancellation of the endorsement by the proper officer by merely cancelling his signature in the Bill of Entry which contained the earlier order of 'Out of customs charge', the Department was well with in its right in ignoring the said order of subsequent variation or cancellation and taking the stand and proceeding on the footing that such alteration or cancellation was not a valid one, conferring any rights upon the applicant. The subsequent order of cancellation which appears to have been made by the proper officer who earlier made the order 'Out of customs charge', in the absence of any authority or power conferred on him, must be viewed as a nullity and nonest in the eye of law and consequently the applicants could not claim any rights on a such void or illegal order.

8. For all the reasons stated above, we answer to the question referred to us in both the above references, by holding that on the facts and circumstances of the case, the Department was right and well-merited in holding that the cancellation of the 'Out of customs charge' order originally made under Section 47 of the Customs Act, 1962, cannot be considered to be valid. No costs.