Unitron Limited Vs. Collector of Customs

Unitron Limited Vs. Collector of Customs

SooperKanoon Citation : sooperkanoon.com/8646

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-14-1995

Reported in : (1996)(88)ELT298TriDel

Appellant : Unitron Limited

Respondent : Collector of Customs

Judgement :
1. These two appeals are against the order of the Collector of Customs (Appeals), New Delhi, confirming the rejection of the refund claim of the appellant.

2. There was no one for the appellant nor a request for adjournment.

Therefore, after hearing Shri K.K. Datta, JDR, the appeals are being decided on the basis of the submissions in the memorandum of appeal.

3. The appellant has filed a claim for refund of customs duty paid on two consignments of Integrated circuits and transistors on the ground that the package which was supposed to contain these goods was empty.

The Assistant Collector has rejected the claim on the ground that the carrier had not taken responsibility for the loss. In appeal the Collector (Appeals) held that Section 23 of the Customs Act, 1962 would not apply, because there is no evidence to show that the loss was "final". He says that it cannot be said that the goods have been lost, because there is no customs examination report or a survey report. I am not able to understand this finding. It is clear from the Collector's order that when the packages were called for examination by the customs, they were found empty. The only ground under which refund under Section 23 cannot be claimed is if the loss took place due to pilferage. In that case, however, the goods would be entitled to refund in terms of Section 13. It is clear from the letter dated 6-2-1990 of the International Airports Authority of India that the consignment was received by the IAAI in "damaged/empty condition" from the carrier. The IAAI has advised the appellant to take up the matter with the carrier.

4. There are thus only two possibilities either the packages were imported empty into India in which case there would obviously be no question of payment of duty on them. This, in fact, seems to be the case with regard to the goods covered by Appeal No. C-2096/91. The IAAI in its letter dated 15-1-1990 has informed the appellant that the consignment was not received on the flight. The other possibility is that after the goods were received, they were lost either due to pilferage or otherwise. This would appear to be the position with regard to the consignment in the other appeal which the IAAI has received damaged empty condition. In that case the appellant would not be required to pay duty by the application either of Section 23 or of Section 13. The Collector's finding that the loss is not final and, therefore, refund cannot be sanctioned is not sustainable in view of the provisions of Section 13 which provides that duty liability would arise if pilfered goods restored to the appellant. If the goods were traced by the appellant, they would be handed back to the IAAI from whose custody they were apparently stolen. In any event, there is no provision of law for withholding the refund on this account.

5. In the circumstances, I allow both the appeals. No other reason having been given for rejecting the refund the appellant becomes entitled to it. Consequential relief therefore, would follow.