

Collr. of C. Excise Vs. Baroda Rayon Corporation Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-30-1995

Reported in : (1996)(83)ELT135TriDel

Appellant : Collr. of C. Excise

Respondent : Baroda Rayon Corporation Ltd.

Judgement :

1. Respondents-assesseees and respondents' counsel are absent. There is no request of adjournment made. We have heard Senior Departmental Representative, Shri T.R. Malik.

2. Assessee imported plant and machinery, presented Bill of Entry on 16-5-1977 and warehoused the goods on the same day under Bond duly executed. Goods were cleared on payment of duty on 22-9-1980. In calculating the duty amount payable, rate of exchange prevailing on the date of clearance was adopted. This was apparently erroneous as according to the law applicable on the day of clearance rate of exchange prevailing on the day of filing the Bill of Entry should have been adopted. Show cause notice was duly issued by the Assistant Collector to show cause for levying differential amount of duty. No reply was received. The Assistant Collector passed an order confirming the demand made in the show cause notice. The assessee challenges the order before Collector (Appeals) who set aside the order of the Assistant Collector relying on Bombay Customs House Public Notice dated 11-7-1978. The Department being aggrieved filed this appeal.

3. We are concerned in this case with the effect of Sections 14,15 and 46 of the Customs Act, 1962. Section 15 underwent some changes in 1966.

Sections 14, 15 and 46 underwent changes by Act 25 of 1978 which came into force on 1-7-1978. As the proviso stood after the 1966 amendment, in the case of goods imported under Section 46, the rate of duty, the rate of exchange and tariff valuation shall be the rate and valuation on the date on which Bill of Entry was presented under Section 46 and in the case of goods cleared from warehouse under Section 68 on the date on which the goods are actually removed from the warehouse. The law provided that not only the rate of duty and tariff valuation but also rate of exchange shall be that in force on the date of actual removal of warehoused goods. The Supreme Court in *M/s. Prakash Cotton Mills (P) Ltd. v. B. Sen and Ors.* reported in 1979 (4) E.L.T. (J 241) (SC), dealt with the goods where Bill of Entry was presented before 1966 amendment and goods were cleared after the amendment. The Supreme Court held as follows :- "As it is not in dispute before us that the goods, which are the subject-matter of the appeals before us, were removed from the warehouse after the amending Ordinance had come into force on July 7,1966, the customs authorities and the Central Government were quite right in taking the view that the rate of duty applicable to the imported goods had to be determined according to the law which was prevalent on the duty they were actually removed from the warehouse, namely, the amended Sections 14 and 15 of the Act. There is therefore no force in the argument that the requirement of the amended Section 15 should have been ignored simply because the goods were imported before it came into force, or th, t their bills of lading or bills of entry were lodged before that date." 4. Sections 14 and 15 underwent certain changes by virtue of Act 25 of 1978. By this amendment the words "rate of exchange" were deleted from Sub-section (3) of Section 15. In other words, with effect from 1-7-1978 the rate of exchange is not to be determined on the basis of Section 15. A corresponding provision was made in Section 14 by substituting the proviso to Sub-section (1) of Section 14. The proviso reads as follows :- "Provided that such price shall be calculated with reference to the rate of exchange as in force on the date on which a Bill of Entry is presented under Section 46 or Shipping Bill of export as the case may be, is presented under Section 50." 5. The rate of duty and the tariff valuation, in the case of goods cleared from a warehouse under Section

68 have to be determined as on the date on which the goods were actually removed from warehouse by virtue of Sub-section (1) of Section 15 of the Act. The rate of exchange is no longer dealt with in Section 15 but dealt with Section 14, according to which the calculation of the price shall be made with reference to rate of exchange as in force on the date on which a Bill of Entry is presented under Section 46. It must, therefore, necessarily follow that while calculating the rate of duty and tariff valuation as on date of removal of goods from warehouse, the rate of exchange as in force on the date on which Bill of Entry was presented under Section 46 has to be adopted. The view taken by the Collector (Appeals) in his impugned order is erroneous and that taken by the Assistant Collector is right.

6. We, therefore, set aside the order passed by the Collector (Appeals) and restored the order passed by the Assistant Collector. Appeal is allowed.

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