international Clearing and Vs. Collector of Customs

international Clearing and Vs. Collector of Customs

SooperKanoon Citation : sooperkanoon.com/89

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Feb-01-1983

Reported in : (1983)LC596DTri(Chennai)

Judge : C Pillai, S Kalyanam

Appellant : international Clearing and

Respondent : Collector of Customs

Judgement :

1. Appeal under Section 129 of the Customs Act, 1962, praying that in the circumstances stated therein the Tribunal will be pleased to set aside the order of the lower authority with a direction to admit the drawback claim on the basis of documentary evidence produced.

2. This appeal coming up for orders upon perusing the records and upon hearing the arguments of Shri R. Sashidharan, Advocate for the appellants and upon hearing the arguments of Shri S.K. Choudhury, Senior Departmental Representative for the respondent, the Tribunal makes the following: 3. This petition was filed before the Government of India against the Order-in-Appeal No. C. 48/199/1979 dated 4.10.80 passed by the Appellate Collector of Customs, Custom House, Madras rejecting their appeal for drawback claimed against the Order No. S2/127/78-DBK dated 6.1.79 of the Assistant Collector of Customs, Drawback, Custom House, Madras. By virtue of Sub-section (2) of Section 131B of the Customs Act, 1962, this petition has been transferred to the Tribunal to be

heard as an appeal.

4. The appellants had contended that the correspondence they had with their suppliers proved that the suppliers had taken back the defective goods and supplied free replacements which were cleared on payment of duty and that once the identity of the goods had been established, they are entitled to drawback of duty. The Appellate Collector observed in his order that the identity of the goods could not be established fully with reference to the relevant import documents and that even the copies of correspondence produced by the appellants did not anywhere confirm that the goods re-exported were the same as those originally imported under the invoice pertaining to Bill of Entry D. 895 dated 12.12.75. The appellants were therefore asked to produce the warrant contract for verification; this was not produced by the appellants; the appeal was rejected by the Appellate Collector, as unsubstantiated.

Against this order, the present appeal has been filed.

5. During the hearing before us, it is contended that it was not correct on the part of the Appellate Collector to have gone into the question of identity of the goods exported with reference to Section 74(1)(a) of the Customs Act, 1962. The order of the Assistant Collector was one of rejection under Section 76(1)(b) [wrongly stated as 76(2)(b)] of the Act and hence the issue of identity was not before him at all. It is also canvassed that the Assistant Collector's order would show that identity of the goods has been accepted by him; if it was not so he would not have gone into the question of market price of the goods vis-a-vis the amount of drawback claimed. A reading of the Order-in-Original does not lead us to the conclusion that identity of the goods has been established. Various conditions have to be satisfied before a drawback can be allowed; one of these is identity with reference to imported goods; and another, market price of the goods brought for export vis-a-vis the amount of drawback claimed. These are independent criteria and can be gone into as suchWe, however, find substance in the contention of the counsel of the appellants that the Appellate Collector, in dealing with the identity of the goods, has misdirected himself. The issue was neither raised before him nor covered by the order of the Assistant Collector. We, therefore, set aside the order of the

Appellate Collector of Customs, without prejudice to the right of the Appellate Collector or of the Assistant Collector to examine the issue regarding identity of the goods, or of the Appellate Collector to decide on the market value of the goods with reference to the amount of drawback claimed.