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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-28-1995

Reported in : (1996)(82)ELT231TriDel

Appellant : Mysore Wire and Metal Industries

Respondent : Commr. of Cus.

Advocate for Pet/Ap. : Shri. R.Subramanian

Judgement :

1. This appeal is directed against the order passed by the Collector of Customs (Appeals), Madras dated 15-4-1987. By this order the Collector (Appeals) has upheld the order of the Assistant Collector of Customs, Division No. II, Bangalore rejecting the application made by appellants herein for relief and refund of duty paid on Copper rods in terms of Section 22 of the Customs Act, 1962. The learned Consultant Shri R.Subramanian appearing for the appellants submitted that the claim has been rejected on the ground that the requirement of Section 22 of the Customs Act, 1962 was not complied with by the appellant. He assailed the reasoning of the lower authority by pointing out that the clearing Agent had approached the Assistant Collector of Customs at Bombay to assess the damage caused to the goods at the port of entry itself. The affidavit dated 23-7-1983 filed in this case was referred to. Since the goods were to be bonded warehousing Bill of Entry was filed and the goods allowed to be transferred under bond from Bombay to Bangalore.

Before removing the goods from Bombay insurance survey was got done at Bombay itself after obtaining no objection from Assistant Collector of Customs, Bombay. The survey report indicated that polythene coverings of the goods were torn and the copper wire rods was tarnished superficially. The learned Consultant referred to the various Sub-sections of Section 22 and contended that what is actually required is that the facts of the goods being damaged should be established to the satisfaction of the customs authority not necessarily at the time of clearance of the goods after unloading. In this case Superintendent of Customs, Bangalore vide letter dated 4-10-1985 to the Assistant Collector has stated that the goods were received [in] damaged condition. Endorsement regarding damage was made by the Central Warehousing Corporation Authorities. The learned Consultant referred to case law of the Bombay High Court and the Tribunal to say that the Customs authorities have to take into consideration the results of the survey reports in matters such as short landing and the principles thereof should apply equally for a situation under Section 22 of the Customs Act. Shri A.K. Singhal, the learned Departmental Representative pointed out that in the first instance the ingredients for satisfying the Assistant Collector granting [abatement] of duty under Section 22(1) of the Customs Act, 1962 are totally absent in this case. He pointed out that their refund claim is based on Section 22(1). The ground for such refund is also alien [to] what is envisaged in Section 22 because the refund claim was for an amount being the cost of rectification carried out by the appellants for the damaged goods. On the other hand, Section 22 lays down that where it is shown to the Assistant Collector's satisfaction that imported goods have been damaged under condition therein and such as goods shall be chargeable to duty in accordance with provisions of Sub-section (2). This Sub-section says that the duty charged shall bear the same proportion to the duty chargeable on the goods before the damage or deterioration which the value of the damaged or deteriorated goods bear to the value of the goods before the damage or deterioration. The learned Departmental Representative further cited and relied upon the Supreme Court judgment to the effect that the satisfaction of Customs Officer before clearance is a necessary condition in such matters.

2. We have carefully considered the submissions made by both the sides.

We are in agreement with submissions made by the learned Departmental Representative as recorded above that the refund claim made by appellants under Section 22 of the Customs Act is totally at variance with the provisions of abatement of duty on damaged goods on proportionate basis prescribed under Sub-section (2) of Section 22.

Apart from this, the record shows that the damage was not brought to the notice of the Assistant Collector at the Port on clearance before the goods were transhipped from Bombay to Bangalore. Thirdly, perusal of the survey report shows that it was done for insurance cover purposes and the report further indicated that the damage was by way of superficial tarnishing of copper wire rods due to the polythene cover being torn. The survey report was also not filed before the Assistant Collector of Customs at the Port of clearance before transit. With regard to the case law cited by the learned Consultant, we observe that all these cases relate to a situation under Section 116 and Section 23 thereof which are not *pari materia* with the provisions of Section 22.

In these circumstances, we see no reason to interfere with the order passed by the Collector (Appeals). The appeal is, therefore, rejected.

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