(2004) 05 CAL CK 0043

In the Calcutta High Court

Case No : Writ Petition No. 12027 (W) of 2003

B. Arun Kumar and Co. APPELLANT

Vs

Commissioner of Customs RESPONDENT

Date of Decision : 12-05-2004

Acts Referred:

Customs Act, 1962 — Section 129B
Customs, Excise Service Tax Appellate Tribunal (Procedure) Rules, 1982 — Rule 41

Citation : (2005) 123 ECR 214 : (2005) 180 ELT 152

Hon'ble Judges : Kalyan Jyoti Sengupta, J

Bench : Single Bench

Advocate : Supriyo Bose, Amit Gupta and S.N. Ghosh, for the Appellant;Shibdas Banerjee and Anmola Jha, for the Respondent

Final Decision : Allowed

Judgement

Kalyan Jyoti Sengupta, J.—By this writ petition the petitioner approached this Court for implementation of the earlier order of the Customs, Excise and Gold (Control) Appellate Tribunal granting refund of the redemption fine and penalty paid by the appellants in terms of the order dated 30th April, 1990 and also for payment of interest at the rate of 12% per annum upon expiry of the period of one month. The brief statement of the fact is required to be stated hereunder.

2. The petitioner imported certain quantity of Palm Fatty Acid Distilate and Palm Fatty Acid Oil. However these goods were confiscated by an order of the Collector of Customs dated 31st October, 1986 with an option to redeem the same subject to payment of rupees 85 lacs by way of fine and rupees 15 lacs by way of Bank Guarantee. The petitioner paid the aforesaid amount of rupees 85 lacs in cash and secured a rupees 15 lacs by a Bank Guarantee. The petitioner preferred an appeal against the aforesaid order of the Collector of Customs and the appeal was not allowed. So another appeal was taken to the Calcutta Bench of the Customs, Excise and Gold (Control) Appellate Tribunal. By an order dated 30th April, 1990, the CEGAT set aside the order or the Collector of Customs and

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directed for refund of the aforesaid amount of the redemption fine and also release of the Bank Guarantee. The petitioner thereafter made a representation to the Collector of Customs for implementation of the aforesaid order. The Collector of Customs thereafter refunded the money paid by the petitioner on account of redemption fine and released the Bank Guarantee. However, this was done beyond the stipulated period of one month fixed by the learned CEGAT. Thus the payment of interest in terms of the order of the CEGAT did give rise. The interest was not paid. So the petitioner approached once again with an application to the CEGAT. The CEGAT by an order dated 19th December, 2002 directed the Collector of Customs to decide on the application for the refund of interest amount as calculated and claimed by the writ petitioner herein without any further delay. The CEGAT expressed their displeasure while observing the Commissioner''s handling of the implementation of the earlier order. Thereafter, the Collector of Customs passed the impugned order expressing his inability to implement the earlier order by way of calculation of interest.

3. The learned Counsel appearing for the petitioner has impugned the aforesaid order contending that the Commissioner had no option but to calculate the amount of interest which he has misread the earlier order of the CEGAT as well as the later one. He submits that it is a harassing tactics on the part of the Commissioner of Customs. As far as the question of jurisdiction of the CEGAT is concerned, Mr. Bose submits that the provisions of Section 129B of the Customs Act is wide enough to clothe with the jurisdiction and authority to grant interest by the Tribunal.

4. Mr. Shibdas Banerjee, learned Senior Counsel appearing for the Union of India contends that the CEGAT has no power or jurisdiction to grant any interest on account of refund of the redemption fine. They are to act within the four corners of the statute and from the statutory provision it will appear that the CEGAT has jurisdiction only to grant interest in cases of refund of duty levied or realised by mistake or otherwise. There is no provision for granting interest in case of delayed refund of redemption duty. So, I find an issue has been raised that the order passed by the learned CEGAT is null and void and this can be avoided at any stage. Therefore, it is necessary to set out the provisions of Section 129B wherefrom the power of the Tribunal will appear.

Section 129B : -

(1) The scheme of the Act in regard to confiscation of goods improperly imported or improperly imported and secreted, but seized on search of premises where they are stocked, is such that all questions of fact are to be decided by Customs authorities and on question of law arising out of the decision of Appellate Tribunal, the opinion of the High Court requires to be obtained and if the importer is aggrieved by the judgment of the High Court he can file an appeal before the Supreme Court on the High Court certifying it to be a fit case for appeal. This makes it clear that the remedy provided (o, the importer is not only not onerous but in fact is efficacious and therefore in such cases the confirming,

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modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be after taking additional evidence, if necessary.

(2) The Appellate Tribunal may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1) and shall make amendments if the mistake is brought to its notice by the Collector of Customs or the other party to the appeal:

Provided that an amendment which has the effect of enhancing the assessment or reducing a refund or otherwise increasing to liability of the other party shall not be made under this sub-section unless the Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

(3) The Appellate Tribunal shall send a copy - of every order passed under this section to the Collector of Customs and the other party to the appeal.

(4) Save as otherwise provided in Section 130 or Section 130E, orders passed by the Appellate Tribunal on appeal shall be final.

5. Upon careful reading of the aforesaid provisions of Section 129B, it appears to me, as rightly submitted by Mr. Supriyo Bose that the Tribunal, can pass appropriate order as it thinks fit and proper meaning thereby if the Customs Authority has done something wrong in exercise of the power and duties conferred upon them under the statute, the CEGAT has the supervisory power to undo wrong by passing appropriate order. Mr. Bose''s client was compelled to pay the redemption duty on account of confiscation of the goods and this was done in purported exercise of power under Customs Act by the authority concerned and this was examined by the CEGAT and found that such an action on the part of the Customs Official is unauthorised and illegal. When in exercise of unauthorised action a wrong is inflicted to any citizen, I am of the view the CEGAT will exercise its power not only to cancel action of the authority concerned but must restitute also the person affected. It appears from the original order that the Customs Authority was given a chance to refund the entire money within a certain time but the Customs authority did not avail of the chance and nor refunded the money for any reason whatsoever after a long time. Therefore, I think that the order to the extent of granting interest to the petitioner is not unauthorised or ultra vires u/s 129-B. Therefore, I uphold the order of the learned Tribunal granting interest upon expiry of one month period at the aforesaid rate.

6. In the impugned order it appears that the Commissioner has misread, to say, least deliberately both of the orders of the learned CEGAT. It is clear from apparent reading of the orders that he was asked to adjudicate on the quantum of interest as urged by the petitioner, not the claim of interest itself. Claim of interest itself has been adjudicated earlier. So, it was not open to negate the

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earlier order of the learned Tribunal. He was merely an implementing authority. The CEGAT has directed to do so. In my view what he cannot do directly, should not have done so in a circutious way. In essence he has defied the order of the CEGAT which he cannot do under the hierarchical system of the aforesaid Act.

7. Accordingly, I direct the Commissioner of Customs to pay interest at the rate fixed by the CEGAT and to be calculated on and from the date of expiry of one month as mentioned in the earlier order of the Tribunal and such calculation shall be made upto the date of payment of interest.

8. This application is thus allowed.

9. However, having regard to the persuasive argument of Mr. Banerjee, I refrain myself from awarding any cost.

10. Mr. Banerjee prays for stay of operation of this judgment and order. I have considered his submission and I grant stay till four weeks after summer vacation.

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