

(2000) 08 MAD CK 0081
In the Madras High Court
Case No : R.C. No. 11 of 1984

Bharat Earth Movers Ltd.

APPELLANT

Vs

Collector of Customs

RESPONDENT

Date of Decision : 23-08-2000

Acts Referred:

Customs Act, 1962 — Section 22, 23, 23(1), 23(2)

Citation : (2001) 133 ELT 564

Hon'ble Judges : R. Jayasimha Babu, J;F.N. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : J. Narayana Swamy, for Subbaraya Aiyar, for the Appellant; P. Murali Kumaran, A.C.G.S.C., for the Respondent

Judgement

R. Jayasimha Babu, J.—Assessee, a manufacturer of earth moving equipments imported dumpers in knocked down condition. The goods were brought by ship to the Port of Madras on 16-4-1981. The assessee paid duty and obtained the order for clearance out on that very date. The goods were removed from the Port Trust premises 2 months later on 8-6-1981 and 4-7-1981 and transported to the assessee's factory at Kolar Gold Fields in Karnataka.

2. According to the assessee, on 21-4-1981 and 22-4-1981 the goods were examined by the assessee, its Steamer Agent, Surveyors, Insurance Agents and Customs Officials and it was at that time found, that out of the 18 packages, 2 packages were in good condition, and that goods contained in 14 packages were severely damaged. The examination took place about five days after the order of clearance had been given to the Customs. The report on which the assessee relied is not one which has been endorsed by any of the Customs Officials. It is only the claim of the assessee and the Steamer Agent that the Customs Officials were present at the time of survey. After the goods were taken to the assessee's factory, further survey appears to have been conducted by the Insurance Company. The insurers though initially reluctant to accept the assessee's claim that the goods should be treated as having been destroyed as those parts were

incapable of being used for assembling the dumpers, appear to have subsequently agreed to value the goods at their salvage value taken at Rs. 12.5 lakhs.

3. According to the assessee, the insurer has paid to the assessee a sum of U.S. \$ 6,40,640/- the rupee equivalent of which is 62,07,801.60. We have been informed by the assessee's counsel that the value of the goods imported was in the range of Rs. 50 lakhs and the amount of duty that had been paid thereon was Rs. 27 lakhs. In the correspondence exchanged between the assessee and its insurer, the insured value of the goods is given as Rs. 50,03,0007-. It is thus evident that part of the duty which had been paid by the assessee has been recouped by it by way of the settlement with the insurer who appears to have met a part of the value of the goods, and part if not whole of the amount of the duty paid.

4. The goods though described as having been treated as destroyed had been valued by the assessee itself at Rs. 12.5 lakhs and the assessee itself had informed the insurer of its desire to retain possession of the goods, and that if the goods were to be sold in auction was willing to purchase the same at the price of Rs. 12.5 lakhs. The sum of Rs. 12.5 lakhs appears to have been revised to Rs. 13.00 lakhs subsequently. Of the total amount expended by the assessee towards the value of the imported goods and duty paid thereon, after deducting the sum of Rs. 13.00 lakhs representing the value of the imported goods though damaged but found to be of some use to the assessee, the balance of Rs. 62 lakhs has been paid to the assessee by the insurer. The assessee has thus recouped the duty that was paid, by retaining the damaged goods and by receiving from the insurer, the value of the imported goods and part of the amount of the duty it had paid on the goods.

5. Despite all this, the assessee choose to make a claim for remission of duty invoking Section 23 of the Customs Act on the ground that the goods were destroyed. The claims so made did not find favour with the original Authority; with the Appellate Authority, as also the Tribunal, and in our opinion, rightly so.

6. Learned counsel for the assessee contended that the term "destroyed" used in Section 23 of the Customs Act has to be understood in the popular sense, and that one of the meanings as given in the Law Lexicon is "reduced to a useless form". The goods imported were dumpers in semi knocked down condition which were meant to be assembled into operational dumpers, and because of the severe damage to the different parts it was impossible to assemble the complete dumper and therefore, those parts should be regarded as having become useless. It is not necessary for us to pronounce, on the correctness of this submission as the assessee is not entitled to claim remission on duty, in the background of the fact that it had received the value of the imported goods together with the duty paid thereon after adjusting the value of the damaged goods, from the insurer, and secondly on the ground that u/s 23 of the Act the right to seek remission on duty on goods destroyed is confined to the destruction

of goods at a time before the clearance for home consumption.

7. The destruction of the goods referred u/s 23(1) of the Act should not only have occurred prior to the clearance for home consumption but should also normally be intimated to the Customs before the clearance for home consumption. As noticed by us earlier, even the report of the examination conducted on 21st April, 1981 relied upon by the assessee does not show that the contents of all the packages had been so severely damaged as to make it impossible to assemble them into the dumper. It had been noted that the contents of two packages had not been damaged, and the contents of 14 packages had been severely damaged. There was no note that the damage was to such an extent that it was incapable of repair nor was such damage established to the satisfaction of the Customs Officer before the goods were cleared for home consumption. Although one need not be overly technical in regarding the clearance for home consumption as closing the gates against any claim for remission, on the facts of the present case, we are satisfied that the assessee itself when it removed the goods from the customs did not regard the goods as having been destroyed.

8. Section 23 of the Act clearly requires that the destruction of the goods to form the basis of a claim for remission of duty - must have occurred before the goods were cleared for home consumption. The remission of duty is to be allowed only after the destruction is established to the satisfaction of the appropriate Officer. The owner of the goods has been given the choice u/s 23(2) of the Act to relinquish his title to the goods and on such relinquishment he will cease to be liable to pay any duty thereon.

9. In respect of damaged or deteriorated goods the appropriate provision is Section 22 of the Act. If the goods imported by the assessee at the time of examination had been treated as damaged or deteriorated goods, the assessee ought to have followed the procedure u/s 22(a) or (b) which it did not do in this case. The Customs Authorities are required only to take note of the condition of the goods at the time of clearance for home consumption. The Act advisedly refers to the clearance for home consumption, as the point of time prior to which damage, deterioration, loss, destruction or abandonment is required to be shown to have taken place. The Supreme Court in the case of AIR 1992 705 (SC) observed, inter alia, that the question of redetermining the value of the imported goods can arise only in a case where such damage or deterioration before the clearance is proved to the satisfaction of the proper officer. This observation would apply with equal force to a case of alleged destruction of the goods as well.

10. We therefore, answer the question referred to us in favour of the Revenue and against the assessee as the assessee has failed to prove that the imported goods had been destroyed prior to the clearance of the goods for home consumption. The Revenue shall be entitled to costs in the sum of Rs. 1500/-.