(2000) 07 MAD CK 0007

In the Madras High Court

Case No : Ref. Case No. 1 of 1987

Bharat Earth Movers Ltd. APPELLANT

Vs

Collector of Customs RESPONDENT

Date of Decision : 25-07-2000

Acts Referred:
Customs Act, 1962 — Section 13, 18(13), 23, 23(1)

Citation : (2001) 129 ELT 580

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

Bench : Division Bench

Advocate : J. Narayanaswamy, for the Appellant; J. Madanagopal Row, SCGSC, for the Respondent

Judgement

R. Jayasimha Babu, J.—The question referred to us at the instance of the assessee is as to whether a claim for refund of duty on account of

pilferage is covered by the provisions of Sub-section (1) of Section 23 of the Customs Act, 1962. The question arose in the background of the

fact that when a survey was taken of the goods which had been imported by the assessee on 1-4-1977 after the order of clearance for home

consumption had been obtained by the assessee on 24-3-1977, that survey having been made in the presence of the Customs Officer it was found

that there was a shortage in the quantities the packages having been found to be open, the assessee claimed the benefit of Section 23 of the Act on

the ground that the shortage which was due to pilferage amounted to loss and therefore, under the provisions of Section 23 of the Act which

provides for remission of duty on lost, destroyed or abandoned goods, the assessee was entitled to remission. The claim that so made was

rejected by the authorities and the rejection upheld by the Customs, Excise and

Gold (Control) Appellate Tribunal. The rejection of the claim was

on the ground that the loss being attributable to pilferage and there being a specific provisions regarding the duty on pilfered goods u/s 13 any claim

could only be under that provisions and not u/s 23.

2. The Tribunal while reaching that conclusion considered the fact that Section 13 was a provision which could not be rendered redundant or

otiose by showing Section 23 as to include therein contingencies specifically dealt with in an earlier provision namely Section 13. It also held that in

the past the revenue had consistently been regarding the two provisions as mutually exclusive.

3. Learned Counsel for the assessee submitted that having regard to the language employed in Section 23 of the Act, the word used therein being

''lost or destroyed pilferage would fall within the scope of the provision as the result of pilferage is loss to the owner of the goods. In so far as the

owner is concerned, the goods are lost to the owner. Counsel also placed strong reliance on the decision rendered by the learned Single Judge of

the Delhi High Court in the case of Sialkot Industrial Corporation v. Union of India and Anr. reported in 1979 (4) E.L.T. Q 329 - The view taken

in that decision was that Section 13 provides for grant of relief at a stage before an order for clearance for home consumption or deposit in a

warehouse has been made while Section 23 comes into play after the duty has been paid and an order of clearance for home consumption has

been passed but before the goods are actually cleared. Section interpreted was to include cases of pilferage as well.

5. Having perused the decision relied upon we are not persuaded to accept that Section 23 was intended to take within its ambit cases of pilferage

for which specific provision had been made by Parliament in Section 18(13) of the Act. It is a basic rule of construction of statute that every

provision contained in the statute should be assigned a meaning and given effect to, as the presumption is that the legislature did not intend to enact

anything which was redundant or otiose and that the provisions of statute are always required to be construed harmoniously so as to effectuate

each and every part thereof -

6. Section 18(13) is captioned ''Duty on pilfered goods'' and reads thus:

If any imported goods are pilfered after the unloading thereof and before the proper officer has made an order for clearance for home

consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods except where such goods are

restored to the importer after pilferage.

7. The situation contemplated in the provision is pilferage occurring after the unloading of the goods and before the making of an order for

clearance for home consumption or deposit in a warehouse. In respect of such pilferages the importer is relieved of the liability for payment of duty

except where such goods are restored to the importer after pilferage.

8. Section 23 of the Act is captioned Remission of duty on lost. Destroyed or abandoned goods. That provision as it stood at the relevant time

read thus:

23(1) Where it is shown to the satisfaction of the Asstt. Collector of Customs that any imported goods have been lost or destroyed, at any time

before clearance for home consumption the Asstt. Collector of Customs shall remit the duty on such goods.

(2) The owner of any imported goods may at any time before an order for clearance of the goods for home consumption has been made, relinquish

his title to the goods and thereupon he shall not be liable to pay the duty thereon.

9. Thus the provision deals with goods which are abandoned by the importer as also goods which are lost or destroyed at any time before the

clearance for home consumption. The loss or destruction if it had occurred before clearance for home consumption would entitle the importer to

remission of duty in respect of such goods. The loss or destruction must be of imported goods.

10. Both Sections 13 and 23 are applicable only after the stage of importation and prior to the order for clearance for home consumption or

deposit in a warehouse is made. Section 13 deals with one specific mode of loss namely pilferage. In respect of goods which have been pilfered

after they had been unloaded but before the goods are cleared for home consumption or deposit in a warehouse the importer would have no

liability for payment of duty. In cases where Section 23 is attracted, the importer is entitled to remission of duty, which we are informed by the

Counsel of the Bar would require that duty be first paid and thereafter a refund claimed.

11. The fact that in one case, there is immediate relief in liability and in the other restriction (remission) to the importer of duty that he may have

paid does not in our view make any difference while determining the true scope of two provisions. Though pilferage may as it thus [result] in loss

that subject of pilferage having been specifically dealt with and provided for in Section 13 loss sustained by an importer on account of pilferage has

to be dealt with u/s 13 and not u/s 23 - Loss for reasons other than pilferage and goods which are destroyed are to be dealt with u/s 23.

12. When a statute contains a provision which deals with a specific situation and prescribes as to what should be done when that situation occurs

that provision is in the nature of special provision so far as that kind of a situation [is] concerned. A general provision in the later part of the statute

which may prima facie appear to be wide enough to encompass the situation already dealt with and provided for cannot be so construed as to

make two different provisions applicable to the same situation and giving option to the parties affected by the application of those provisions to

choose one or the other, at their convenience.

13. The intention of the legislature in this regard was subsequently made abundantly clear when amendments were effected to Section 23 with

effect from 13-4-1983 by Act 11 of 1983. In the opening part of Section 23(1) the words without prejudice to the provisions of Section 13 are

added. In addition after the word lost in Section 23 otherwise than as a result of pilferage are also added. This amendment in our view is only

clarificatory and did not bring about a change in the law and but made what was already the Law more explicit.

14. We, therefore, answer the questions that has been referred to us by holding that a claim for refund of duty on account of pilferage is not

covered by Section 23(1) of the Customs Act, 1962.

