

(2011) 08 KAR CK 0160
In the Karnataka High Court
Case No : CSTA No. 22 of 2009

C.C., Bangalore

APPELLANT

Vs

Symphony Services Corporation India Pvt.

RESPONDENT

Date of Decision : 03-08-2011

Acts Referred:

Customs Act, 1962 — Section 22, 23, 47, 60

Citation : (2012) 275 ELT 369

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : Susheela and Mr. N.R. Bhaskar, for the Appellant; V. Lakshmi Kumaran and V. Sridharan Advocates, for the Respondent

Judgement

N. Kumar, J.—The revenue has preferred this appeal challenging the order passed by the Tribunal [2009 (245) E.L.T. 661 (Tribunal)] which held that the case of the assessee falls u/s 23 of the Customs Act, 1962 (for short hereinafter referred to as "the Act") and therefore, the assessee is entitled to the remission of entire duty payable on the imported goods.

2. The assessee is a STPI unit working under EOU Scheme. They imported certain equipments for use in their 100% EOU free of duty under Notification No. 52/2003-Cus., dated 31-3-2003. Due to heavy rain, the goods which were warehoused were substantially damaged. The assessee wrote a letter to the Department seeking remission of duty u/s 23 of the Act, as the goods damaged due to rain were not cleared for home consumption. The said request was not acceded to by the Department. They demanded duty on the imported equipments. There was also proposal for demand of interest.

3. Aggrieved by the same, the assessee preferred an appeal to the Commissioner who declined to entertain the appeal and confirmed the order passed by the original authority.

4. Aggrieved by the same, the assessee preferred an appeal to the Tribunal. The

Tribunal on consideration of the entire material on record held that the case falls u/s 23 of the Act and not u/s 22 of the Act as held by the lower authorities and therefore, it set aside the orders passed by the lower authorities and granted remission of duty as contemplated u/s 23 of the Act. Aggrieved by the same, the revenue is in appeal.

5. Learned counsel for the revenue assailing the impugned order contended that though the imported goods were damaged on account of seepage of rain water, it is the assessee who has to be blamed for such negligent act. The assessee did not take proper precautions to protect the imported goods, though in the bond executed the assessee undertook to take all possible care to preserve and protect the imported goods. Under those circumstances, the case falls u/s 22 of the Act and not Section 23 of the Act as held by the Tribunal and therefore, she submits a case for interference is made out.

6. Per contra, the learned counsel for the assessee supported the impugned order.

7. The facts are not in dispute. The assessee is a 100% export oriented unit and they are entitled to import equipments without paying any customs duty subject to the condition they perform their export obligations. The value of the goods so imported is around Rs. 5 crores. After such import of the goods it was kept in their warehouse. Due to heavy rains in the city, due to seepage of water the entire goods so imported became useless. It is under those circumstances they made an application for remission of duty. The fact that the entire extent of goods which are imported is rendered useless because of seepage of water is not in dispute. The case of the revenue is such a consequence is because of the negligence on the part of the assessee in not taking proper care and protection to the imported goods. Therefore, according to them the case falls u/s 22 and not u/s 23 of the Act and the assessee is not entitled to the remission of duty as prayed for.

8. In this context, it is necessary to see the scope of Sections 22 and 23 of the Act which reads as under :-

22. Abatement of duty on damaged or deteriorated goods. - (1) Where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs. -

(a) that any imported goods had been damaged or had deteriorated at any time before or during the unloading of the goods in India; or

(b) that any imported goods, other than warehoused goods, had been damaged at any time after the unloading thereof in India but before their examination u/s 17, on account of any accident not due to any willful act, negligence or default of the importer, his employee or agent; or

(c) that any warehoused goods had been damaged at any time before clearance for home consumption on account of any accident not due to any willful act, negligence or default of the owner, his employee or agent.

Such goods shall be chargeable to duty in accordance with the provisions of sub-section (2).

(2) The duty to be charged on the goods referred to in sub-section (1) 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 bears to the value of the goods before the damage or deterioration.

(3) For the purposes of this section, the value of damaged or deteriorated goods may be ascertained by either of the following methods at the option of the owner:-

(a) the value of such goods may be ascertained by the proper officer, or

(b) such goods may be sold by the proper officer by public auction or by tender, or with the consent of the owner in any other manner, and the gross sale proceeds shall be deemed to be the value of such goods.

23. Remission of duty on lost, destroyed or abandoned goods.-

(1) Without prejudice to the provisions of Section 13, where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed, at any time before clearance for home consumption, the Assistant Commissioner of Customs or Deputy Commissioner 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 goods for home consumption u/s 47 or an order for permitting the deposit of goods in a warehouse u/s 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon;

Provided that the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

18. A careful reading of the aforesaid provision makes it clear that, where it is shown to the satisfaction of the authorities that the imported goods had been damaged or had deteriorated at any time before it is cleared for home consumption on account of any accident not due to willful negligence or default of the owner, the goods which are damaged alone should be taken into consideration for the purpose of charging duty under the Act. To the extent the goods are damaged or deteriorated, there is an abandonment of duty by operation of law. Duty is payable only in respect of goods which is not damaged or deteriorated. As the section makes it very clear, the said damage or deterioration to the goods should be on account of any accident not due to any willful act, negligence or title of the importer. Having regard to the phrase used, the accident referred to therein is a man-made accident. It has no application to a natural calamity.

9. In so far as Section 23 is concerned, it deals with remission of duty. The condition precedent for application of this Section is the imported goods should have been lost other than as a result of pilferage or destroyed at any time before clearance for home consumption. Then the duty payable on such goods which is lost or destroyed shall be remitted by the authorities concerned. Subsection (2) of Section 23 deals with a case where the goods is neither lost nor destroyed but the said goods is of no use to the importer. Then he has the option of relinquishing his title to the goods and thereupon he shall not be liable to pay duty thereon. The proviso to the said Section adds a rider, i.e., such a relinquishment will not be permitted if the goods regarding which an offence appears to have been committed under the Act or any other law for the time being in force. Therefore, a harmonious reading of these two provisions make it very clear if the imported goods are damaged or deteriorated to the extent of the damage or deterioration of the goods, the liability to pay duty abates by operation of law. If the goods imported are lost or destroyed or abandoned then the case for remission of the duty payable is made out. If the goods are lost or abandoned the assessee is expected to bring to the notice of the authorities the factum of the goods being lost or destroyed and seek for remission of the duty payable under the Act. If the goods are there but it is of no use and the assessee wants to abandon the goods, then the request should be for relinquishment of the title to such goods. Once such a relinquishment of title to the goods is made by the assessee then the said goods become the property of the Department and as a consequence of which no duty is payable by the importer. Therefore, the finding recorded by the original authority as well as the Appellate Commissioner that the case falls u/s 22 and not u/s 23 proceeds on a mis-conception of these provisions. When once it is admitted that the entire goods imported has been rendered useless because of seepage of water, the assessee is entitled to claim remission of the entire duty payable on the said goods imported. As the goods is not lost or destroyed, the assessee made a request for relinquishment of the title to the goods with the intention of abandoning the same. By such abandonment and relinquishment, the title in the imported goods is divested and the title vests with the Department. The Tribunal on a proper consideration of the facts keeping in mind the legal principles involved has rightly set aside the order passed by the original authority as well as the Appellate Commissioner granting remission of duty to the assessee. It is in accordance with law. Therefore, no error is made out for us to interfere. In that view of the matter, the substantial questions of law framed in this appeal are answered in favour of the assessee and against the revenue.