

(2007) 10 KAR CK 0080
In the Karnataka High Court
Case No : C.S.T.A. No. 38 of 2006

Commissioner of Customs and Central Excise

APPELLANT

Vs

Jindal Vijayanagar Steel Ltd.

RESPONDENT

Date of Decision : 24-10-2007

Acts Referred:

Customs Act, 1962 — Section 61, 61 (1)

Citation : (2007) 123 ECC 355 : (2007) 149 ECR 355 : (2008) 222 ELT 35

Hon'ble Judges : K.L. Manjunath, J;Arali Nagaraj, J

Bench : Division Bench

Advocate : N.R. Bhaskar, Central Government Advocate, for the Appellant; K.S. Ravishankar and N. Anand, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—Though the matter is listed for admission, by consent of parties the appeal is taken up for final hearing.

2. The short and important question that arises for consideration of this Court in this appeal is the actual date to be reckoned for the purpose of calculation of interest leviable u/s 61 of the Customs Act 1962. The respondent M/s Jindal Vijayanagar Steels Ltd., Bellary is manufacturing steel falling under Chapter 72 of Central Excise Tariff Act 1985. Certain goods were imported and enter the territory of India at Chennai Port. Under the supervision of the appellant, the goods were transported to Toranagallu where warehouse is situated and from the warehouse the respondent has to clear the goods.

3. The respondent has paid the duty payable on the warehouse goods u/s 61 of the Act. The appellant levied the interest on the ground that the goods were cleared beyond the period prescribed u/s 61(1) of the Customs Act 1962. The respondent paid the interest demanded by the appellant. Thereafter the respondent preferred four refund claims with the Asst. Commissioner of Central Excise, Bellary, on the ground that the Department has collected excess interest

and therefore the respondent requested the Department to refund the excess interest recovered from the respondent. Therefore four show cause notices were issued by the Department on 28.1.03, 29.1.03 and 30th January 2003 to show cause why the refund claims made by the respondent should not be rejected u/s 27 of the Customs Act 62. On 23.6.2003 the Asst. Commissioner of Customs and Central Excise, Bellary, rejected the refund claims on the ground that the respondent has failed to prove unjust enrichment and that the period of one year has to be calculated from the day on which the goods entered Chennai Port. Against which the respondent filed four appeals in appeal No. 53 to 56/2003 before the Commissioner of Customs (Appeals) Bangalore. On 5.2.2004 the Commissioner of Customs (Appeals) dismissed the appeals upholding the order passed by the Asst. Commissioner of Central Excise. Being aggrieved by the concurrent findings of the Regional Authority and the Commissioner of Customs (Appeals), the respondent filed four appeals before the CESTAT, Bangalore in Appeal No. 1247 to 1250/2006 contending that both the authorities have committed an error in not calculating the interest payable u/s 61 of the Act from the actual date of physical deposit of the goods in the warehouse of Toranagallu, Bellary District. The Tribunal after hearing the parties has allowed the appeals filed by the respondent on the ground that the time has to be reckoned only from the date on which the goods were deposited physically at Toranagallu and therefore the respondent was entitled for refund of the excess interest paid by then, by its order dt.19.7.2006. Being aggrieved by the orders of CESTAT of Bangalore the present appeal is filed by the department.

4. According to Mr. Bhaskar, the Tribunal has committed a serious error in not considering the provision of Section 59 of the Act in order to reckon the date on which the interest has to be calculated or to show that the period of one year has to be reckoned. According to him as per Section 59, the goods will be under the control of the Department from the day on which all the goods entered the port at Chennai, Since the responsibility of the department would commence from the moment the goods enter the Port at Chennai. Therefore, he contends that in order to recover the interest the date has to be reckoned from the day on which the goods entered Chennai Port.

5. The learned Counsel appearing for the respondent contends that even though the goods have entered the Port at Chennai, the same cannot be termed as the actual warehouse as the goods will be under transit. According to him after fulfilling the formalities as required under law under the provision of the act and at the cost of the respondent the goods will be transported from the Port to Toranagallu warehouse and the actual goods will be deposited in the warehouse on the day on which the goods were received by the Customs officer in the Warehouse of Toranagallu. Relying upon Sub-sections (43) and (44) of Section 2 of the Customs Act, contends that the warehouse goods means the goods deposited in a warehouse. According to him, the goods were actually deposited in the warehouse of Toranagallu and not in the warehouse of Chennai Port. This factual position is not disputed by Mr. Bhaskar is appearing for the appellant.

6. If the goods were actually deposited in the warehouse of Toranagallu and not deposited at Chennai Port the question to be considered by us is whether the time stipulated for taking delivery of the goods within one year has to be reckoned either from the date on which the goods entered the Port at Chennai or actual deposit in the warehouse of Toranagallu.

7. When the learned Counsel appearing for the appellant does not dispute the fact that the physical delivery of the goods to the ware house was delivered at Toranagallu, we are not in a position to understand how the time to levy interest can be reckoned from the day on which the goods were entered the Post at Chennai. It is no doubt true the goods were under that supervision of the appellant department. But the goods were transported at the cost of the respondent-assesses from Chennai Port to the warehouse of Toranagallu. The actual deposit was made in the warehouse of Toranagallu under the supervision of the Warehouse officer at Toranagallu. On facts we are clear that actually the goods were deposited in the warehouse at Toranagallu and the goods were not in the warehouse of the department either in Chennai or in any other place. Therefore we are of the opinion that in order to reckon the time stipulated u/s 61 of the Act to take delivery of the goods from the warehouse has to be reckoned only from the day on which the physical deposit was at Toranagallu and not from the date of goods entering the Port at Chennai.

8. In the result, we do not see any question of law to interfere with the findings of the Tribunal in allowing the appeal of the respondent.

9. Accordingly, the appeal is dismissed.

10. At this stage it is brought to the notice of the Court by the respondent that after the orders were passed by the Tribunal, the appellant-department has already refunded the claim by holding that the respondents are legally entitled for refund. But Mr. Bhaskar submits that the money was refunded to the respondents without prejudice to their right to challenge the orders of the Tribunal. Whether it was refunded without prejudice to the rights of the appellant to challenge the orders of the Tribunal before this Court or not, it is not for us to consider at this stage. Since we have dismissed the appeal on merits, therefore, we need not consider the said submission.