

(2015) 03 SC CK 0142

In the Supreme Court Of India

Case No : Civil Appeal Nos. 9691-9693 of 2003 and 3115-3117 of 2015

Commissioner of Customs

APPELLANT

Vs

A.S. Moloobhoy and Sons

RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A(1)
Customs Act, 1962 — Section 21, 28

Citation : (2015) 318 ELT 576

Hon'ble Judges : A.K. Sikri, J; Rohinton Fali Nariman, J

Bench : Division Bench

Advocate : Ashok Panda, Senior Advocate, Rupesh Kumar, T.M. Singh, Aruna Gupta and B. Krishna Prasad, for the Appellant; Vikram Nankani, P.P. Tripathi, Alok Yadav, Somnath Shukla, Praveen Kumar, Bina Gupta, Rekha Pandey, Mahima Gupta, Anish Chawla, Kamna Sarkar and

Final Decision : Disposed Of

Judgement

1. In C.A. Nos. 9691-9693/2003: The order of the Tribunal [2003 (162) E.L.T. 196 (Tribunal)] reveals that it has decided the case in favour of the Respondents/ importers on merits and also on the ground that show cause notice issued by the Department claiming import duty was beyond the period of limitation and it was not a case where extended period of limitation could be availed by the Department under the proviso to Section 28 of the Customs Act, 1962. After hearing the matter at length we are of the opinion that since the view of the Tribunal on limitation is correct, it is not even necessary to go into the merits of the case.

2. We may point out that the period during which the imports were effected are: (i) December 1998 to March 1999 for which show cause notice was issued on 5.11.1999; (ii) January 1999 to June 1999 and in respect of these imports show cause notice was issued on 19-5-2000.

3. The limitation, at the relevant time, for issuance of show cause notice was six

months. It is therefore clear that in terms of Section 28 of the Customs Act, 1962, the show cause notice issued to the Respondents before the limitation period. However, the Department sought to invoke the aforesaid, proviso on the ground that there was willful misstatement and misdeclaration of the imports in the Bills of Entries which were filed by the Respondents in clearing the goods. The misstatement/misdeclaration which is attributed is that though the imports were not meant for repairs, it was so stated in the Bills of Entries. This stand to invoke the proviso found to be incorrect by the Tribunal and it has recorded that there was no misstatement of fact, in para 7 of the impugned order, which runs as follows:

"We fail to see how this amounts to willful misstatements of the facts. There is nothing in the fact that knowing that it was not entitled to the benefit of Notification still claim. The observation of the Supreme Court in Collector of Central Excise, Hyderabad Vs. Chemphar Drugs and Liniments, Hyderabad, AIR 1989 SC 832 : (1989) 40 ELT 276 : (1990) 184 ITR 224 : (1989) 1 JT 417 : (1989) 1 SCALE 436 : (1989) 2 SCC 127 : (1989) 1 SCR 711 : (1989) 1 UJ 539 that some positive act other than mere inaction conscious or deliberate withholding of information in manufacturing of new other vehicle as required before the extended period can be invoke the irrelevant. The proviso relating to the extended period Under Section 21 of the Customs Act is similarly worded as the proviso Under Section 11A(1) of the Central Excise Act. In the absence of anything to show that the importers, knew or had reason to believe that the activity would not amount to ship repair it is not possible to conclude that they willfully misdeclared the goods as for repair. We do not see any significance in the other act attributed by Moloobhoy himself. The significance of not mentioning particular material of ONGC escapes us. We do not see how the description of the goods as ship spares or marine electric communication repair for GMDSS is wrong or misstatement. They are ship spares and clearly marine electric communication equipment. The fact that MACE India closed down in 1994 again is irrelevant. It is not contended that the certificate issued to it is invalid. The licence has been renewed by the concerned authority subsequently omitting reference to MACE India. It is significant that 17 bonds out of 48 bonds executed by Moloobhoy have been discharged by the customs authority after accepting evidence of fitment of equipment on ships. The extended period of limitation therefore could not be invoked at all in respect of inputs by Dolphin Offshore Enterprises and could not have been invoked in respect of merits made by Moloobhoy and Sons prior to 5th May, 1999."

4. We are shown the copy of letter dated 2-1-1999 written by the Respondents to the Appraising Officer of Customs (Imports). In this communication the Respondents had clearly mentioned the goods imported which were sought to be cleared including the use thereof. On that basis it was claimed that these imports should be treated as one for "the purpose of ship repair". No doubt the Respondents claimed that the goods were meant for ship repair. However, for this purpose the complete statement of fact and the manner in which the imported

goods were to be utilized was stated in the communication. After going through the same it was for the authorities to come to the conclusion whether goods could be treated for the purpose of ship repair or not. In no case it can be termed as willful misstatement/wrong declaration. On this ground alone the Respondent is to succeed in these cases.

5. We, thus, decline to interfere with the order passed by the Tribunal on the aforesaid ground. The appeals are accordingly dismissed. The bonds executed by the Respondents while importing the aforesaid material shall stand discharged.

In C.A. Nos. 3115-3117/2015

While issuing notice in these matters it was directed that these appeals be tagged with C.A. Nos. 9691-9693 of 2003. These appeals have been decided by this Bench by separate orders passed therein. Since in the present case, service is not complete, these matters be listed before the Registrar for completion of service.