(2016) 04 MAD CK 0161

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 1700 of 2010 and M.P. No. 1 of 2010

Commr. of Cus., Chennai — APPELLANT

Vs

Lakshmi Electrical Control Systems Ltd. — RESPONDENT

Date of Decision : 04-04-2016

Acts Referred:

Citation : (2016) 336 ELT 619

Hon'ble Judges : V. Ramasubramanian and N. Kirubakaran, JJ.

Bench : Division Bench

Advocate : V. Sundareswaran, SPC, for the Appellant; T. Sundaranathan, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramasubramanian, J.—This appeal is filed by the Revenue under Section 130 of the Customs Act, 1962, questioning the correctness of an order passed by the Customs, Excise and Service Tax Appellate Tribunal, directing refund of the interest wrongfully paid by the respondent.

2. Heard Mr. V. Sundareswaran, learned Senior Panel Counsel appearing for the appellant and Mr. T. Sundaranathan, learned counsel appearing for the respondent.

3. The appeal was admitted on 16-7-2010 on the following substantial questions of law :

"1. Whether, on the facts and circumstances of the case, the Appellate Tribunal is right in setting aside the orders of the Lower Authorities that the refund claims are time-barred?

2. Whether, on the facts and circumstances of the case, the Appellate Tribunal is right in law in holding that refund of warehousing interest is not covered by the provisions of Section 27 of the Customs Act, without considering the amendment to Section 27 made in 1991 to include refund on interest? And

3. Whether, on the facts and circumstances of the case, the Appellate Tribunal is right in law in allowing the assessee?s appeal without properly considering Notification No. 30/99 issued by the CBEC?"

4. The respondent imported electrical goods and machinery and availed the facility of deferred payment of duty by bonding the goods in a private warehouse. The clearance of the goods from the warehouse had to take place within 12 months. If clearance takes place after 12 months, interest is chargeable under Section 47, apart from charging of duty. The period of 12 months, granted by the statutory provision, was reduced to 6 months in 1999 and further reduced to 30 days in 2001.

5. The respondent made a refund claim on 30-10-2000. But, it was rejected by the Original Authority on the ground that the refund claim was made beyond a period of six months. The Appellate Authority confirmed the same, but the Tribunal reversed the orders and directed refund, on the basis of its earlier decision in Lakshmi Machine Works v. Commissioner of Customs [(2008) 230 E.L.T. 183]. Hence, the Revenue is before us.

6. The main contention of the learned Senior Panel Counsel appearing for the appellant is that the Tribunal proceeded on the basis of the circular in F. No. 475/39/90-Cus.VII, dated 8-8-1990, but that the said circular ceased to have any effect, after the amendment to Section 27(1) of the Act under Act 40 of 1991.

7. It is the contention of Mr. V. Sundareswaran, learned Senior Panel Counsel appearing for the Revenue that if the goods are cleared from the warehouse after the period allowed, the assessee is obliged to pay customs duty along with interest thereon. The word ?interest? was not included in Section 27(1) at the time when the circular dated 8-8-1990 was issued. But, with effect from 20-9-1991, Section 27(1) was amended to include the expression ?interest?. Therefore, according to the learned Senior Panel Counsel, there is no distinction between the interest referred to in Section 27(1) and the interest referred to in Section 61(2).

8. But, we do not think that the learned Senior Panel Counsel is correct. The correct expression used in Section 27(1) is ?interest, if any, paid on such duty?. The circular dated 8-8-1990 reads as follows :

"F. No. 475/39/90-Cus.VII, dated 8-8-1990

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Excise & Customs, New Delhi

Subject : Warehousing Interest - Section 27 of Customs Act inapplicable

****

It has been advised that warehousing interest levied under Section 61(2) of the Customs Act is distinguishable from customs duty defined under Section 2(xv) ibid. Accordingly, provisions of Section 27 will not apply to refund of interest recovered under Section 61(2). However, the period under the Limitation Act may be applicable."

9. The circular does not refer to Section 27. It refers to only customs duty. Definitely, the law makers have understood the distinction between duty and the interest payable on such duty. If the contention of the learned Senior Panel Counsel is accepted, we may have to read ?interest? into the word ?duty?. The amended Section 27(1) reads as follows :

"27. Claim for refund of duty. - (1) Any person claiming refund of any duty and interest, if any, paid on such duty -

(i) paid by him in pursuance of an order of assessment or

(ii) borne by him,

may make an application for refund of such duty and interest, if any, paid on such duty, to the Assistant Commissioner of Customs -

(a) in the case of any importer made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, before the expiry of one year;

(b) in any other case, before the expiry of six months,

from the date of payment of duty and interest, if any, paid on such duty, in such form and manner as may be specified in the regulations made in this behalf and the application shall be accompanied by such documentary or other evidence (including the documents referred to in Section 28C) as the applicant may furnish to establish that the amount of duty and interest, if any, paid on such duty, in relation to which such refund is claimed was collected from, or paid by him and the incidence of such duty and interest, if any, paid on such duty, had not been passed on by him to any other person :

Provided that where an application for refund has been made before the commencement of the Central Excise and Customs Laws (Amendment) Act, 1991, such applications shall be deemed to have been made under this sub-section and the same shall be dealt with in accordance with the provisions of sub-section (2).

Provided further that the limitation of one year or six months, as the case may be, shall not apply where any duty and interest, if any, paid on such duty, has been paid under protest.

Provided also that in the case of goods, which are exempt from payment of duty by a special order issued under sub-section (2) of Section 25, the limitation of one year or six months, as the case may be, shall be computed from the date of issue of such order.

Explanation I. - For the purposes of this sub-section, ?the date of payment of duty and interest, if any, paid on such duty?, in relation to a person, other than the importer, shall be construed as ?the date of purchase of goods? by such person.

Explanation II. - Where any duty is paid provisionally under Section 18, the limitation of one year or six months, as the case may be, shall be computed from the date of adjustment of duty after the final assessment thereof."

10. In so far as Section 61(2) is concerned, it refers only to the interest that becomes payable under Section 47. As a matter of fact, the present sub-section (2) of Section 61, was amended only by Act, 27 of 1999. The amendment, on which, strong reliance is placed by the learned Senior Panel Counsel, to Section 27(1), came in 1991. Yet, Section 61(2) does not refer to Section 27. Therefore, the view taken by the Tribunal cannot be said to be incorrect.

11. Hence, the questions of law are answered against the appellant. The civil miscellaneous appeal is dismissed. No costs. Consequently, the above MP is also dismissed.