
(1977) 09 DEL CK 0005

In the Delhi High Court

Case No : Civil Writ Appeal No. 647 of 1968

Corporation

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 27-09-1977

Acts Referred:

Citation : (1977) 13 DLT 125 : (1979) 4 ELT 329

Hon'ble Judges : B.C. Misra, J

Bench : Single Bench

Advocate : S.L. Bhatia, V.P. Nanda, for the Appellant;

Judgement

B.C. Misra, J.

(1) This writ petition is directed against the order of the Government of India, dated 23/05/1968, by which it has dismissed the revision and affirmed the appellate order of the Appellate Collector of Customs, dated 24/12/1965, by which the appeal had been dismissed and the order of the Assistant Collector of Customs, dated 1/11/1965 had been affirmed.

(2) The material facts of the case giving rise to the writ petition briefly stated are that the petitioner had filed a bill of lading in respect of consignment of three cases of stainless steel sheets, which were assessable to duty. On 29/06/1965, the goods were examined and duty was paid and an order for home consumption was passed. The consignment thereafter remained in the public warehouse and delivery of two consignments was taken, but the third consignment was found pilfered on 8/07/1965. On 17/07/1965 the petitioner made a claim for refund of the duty paid on the pilfered consignment and the Assistant Collector by order dated 1/11/1965 noticed that the refund of duty had been claimed as one of the cases was found empty in the docks. But, he held that the remission of duty on shortages claimed u/s 13 of the Customs Act, 1962 (called the Act) was admissible provided the claim for remission of duty was made in writing before the out of charge order was given by the Customs and since no such claim was

made by the importers before the out of charge order was given, the claim for refund of duty could not be entertained. On appeal, the Collector of Customs maintained the same order and observed that since the pilferage had not taken place before the proper officer had made an order for clearance and as such the claim was inadmissible u/s 13 of the said Act.

(3) It appears that the claim as originally filed was made u/s 13 but in revision before the Government, it was claimed that the refund was permissible u/s 23 of the Act. The Government, however, by the impugned order found that the provisions of section 23(1) of the Act were attracted. Feeling aggrieved, the petitioner has filed this writ petition and has claimed that on a true construction of sections 13 and 23 of the Act, the impugned orders are contrary to law and the refund ought to have been allowed. In the counter affidavit filed by way of return to the rule nisi, the material facts of the case were not disputed. The three consignments had been examined, duty in their respect paid and then an out of charge order had been passed on 29/07/1965. On this date, all the three cases were available. The pilferage took place in one of the cases which was found empty. This was established by a certificate of the Bombay Port Trust and the Survey Report produced by the petitioners. The case set up by the respondents was that the pilferage had taken place after the order for clearance for home consumption had been passed and so the claim was not admissible u/s 13. It has also been denied that section 23 of the Act is applicable. The question, Therefore, turns on whether the respondents have erred in not granting the relief to the petitioner u/s 23 of the Act. The relevant provisions on the subject are contained in sections 13 and 23 of the Act, of 1962 which are reproduced below :

"13.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.23(1) Where it is shown to the satisfaction of the Assistant Collector of Customs that any imported goods have been lost or destroyed, at any time before clearance for home consumption, the Assistant 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".

(4) So far as section 13 is concerned, there is no doubt that it provides for grant of relief at a stage before an order for clearance for home consumption or deposit in warehouse has been made. At that stage, although a bill of lading has been filed, the duty has not been paid and so the order for clearance has not been passed. Therefore, if the goods are at that stage found pilfered, the law provides that the importer will not be liable to pay the duty on the same. This provision deals with only pilferage of the goods and does not specify the loss or destruction. The reason for it is obvious. If the goods have already been lost or

destroyed, no bill of lading is likely to be filed in their respect, which will be filed only if the goods are in existence and are tendered for assessment. Should it be found that after the unloading they have been pilfered, then relief is granted under this section but before the order for clearance for home consumption has been passed. But what happens after such an order.

(5) Mr. Bhatia, learned counsel for the petitioner, does not place any reliance on section 13 of the Act, although the same had been relied upon before the Customs authorities at the initial stages. At the stage of revision, it is section 23 which was sought to support the claim and has been repelled by the Government. Mr. Bhatia claims that the order of the Government is Illegal and refund ought to have been allowed u/s 23.

(6) An analysis of section 23 shows that this comes into play after the duty has been paid and even an order for clearance of goods for home consumption has been passed, but before the goods are actually cleared, and then if it is found that they have been lost or destroyed. In that case the provision is not that the goods will not be liable for the duty, but that the duty paid on such goods shall be remitted by the Assistant Collector. The stages at which the provisions of Sections 13 and 23(1) come into play are, Therefore, clearly distinct and demarcated.

(7) In the instant case, the goods had been assessed to duty and an order for clearance for home consumption had been passed, but before the goods were actually cleared out of the warehouse, they were found to be lost. The claim of the petitioner, would, Therefore, prima facie lie under sub-Section (1) of Section 23.

(8) Mr. Nanda, appearing for the respondents, has resisted the claim on the ground that Section 23 does not apply. The reason behind his argument is the interpretation of the section placed by the Law Minister of the Government in a note. It is to the effect that the expression occurring in Section 23 is lost or destroyed, and not "pilfered", which occurs in section 13. According to them whereas for pilfered goods, section 13 may or may not apply, as the circumstances of the case may warrant, nevertheless, no claim can lie in respect of pilfered goods u/s 23 and the expression "lost or destroyed" used in the section does not embrace within its ambit theft of the goods.

(9) What is the meaning of the word "lost"?

(10) According to the Webster's Third New International Dictionary, the word "loss" means "the act or fact of losing, failure to keep possession, deprivation, theft of property". In the same dictionary, The word "lost" is defined as meaning "not made use of, ruined or destroyed physically or morally, parted with, no longer possessed, taken away or beyond reach of attainment". According to Law Lexicon, Vol. 2 page 44, the word "loss" has no precise hard and fast meaning. It is a generic and a comprehensive term covering different situations. Loss results when a thing is destroyed. But it also is caused when the owner has been made

to part with it although the thing remains in tact. In this sense ,loss means and implies "a deprivation". It is synonymous with damage resulting either in consequence of destruction, deprivation or even depreciation and when a party is dispossessed of a thing, either when it can never be recovered or when it is withheld from him, he is deemed to suffer the loss.

(11) The Supreme Court in *The East and West Steamship Company, George Town, Madras Vs. S.K. Ramalingam Chettiar*, , construing the provisions of Carriage of Goods by Sea Act, 1925, Schedule, Art. III, Paragraph 6, Clause 3, had construed the word "loss". That clause provided that "in any event the carrier and the shipper shall be discharged from all liability in respect of loss or damage unless a suit is brought within one year after the delivery of the goods or the date when the goods should have been delivered". The argument advanced was that the loss or damaged must be limited to the loss or damaged to the goods themselves. and if the goods had not been delivered and had thus been lost to the party ,this kind of loss was not covered by the expression. This contention was rejected and it was held that the expression dealt with all cases of loss or damage whether the loss or damage was caused by the deterioration of the goods or was caused by the non-delivery of the goods and that it included any loss or damage caused to the party. This was the view that the High Court had taken in that case and the same was assailed before the Supreme Court, which the Supreme Court repelled and approving the view of the High Court, it observed thus;

" ON the first question, Therefore, we have come to the conclusion that the word "loss" in the third clause of the 6th paragraph of Art. III to the Act means and includes any loss caused to a shipper or a consignee by reason of the inability of the ship or the carrier to deliver part or whole of the goods, to whatever reason such failure may be due."

The same view has been taken by the High Court of Punjab in *Chuni Lal Dwarka Nath Vs. Hartford Fire Insurance Co. Ltd. and Another*, , whereby the court following *Sivewright v. Allen*, (1906) 2 K.B. 81, observed that loss meant and implied deprivation to the owner howsoever caused.

(12) Similarly, in *Martab Ali Vs. Union of India*, , the court construed the provisions of section 77 of the Railways Act, 1890 and observed that one view was that a strict construction must be put on the section and a narrow meaning should be given to the word "loss", and the other view was that a very comprehensive view must be taken of the matter and the word "loss" must be widely interpreted .The court finally observed in paragraph 13 that the word "loss" did include the entire claim made by the plaintiff whether on the footing of non-delivery, or negligence or wrongful detention or conversion on the part of the railway administration. In *Union of India Vs. Mitayagiri Pullappa*, , it was observed that the word "loss" in section 77 of the Railways Act meant loss to the owner by whatever means and there was no warrant for making a distinction between claim for compensation on account of the loss of goods by a Railway

Company and a claim for compensation on the ground of non-delivery or misdelivery. The same view has been taken in *Darjeeling Himalayan Rly. Co. Ltd. and Others Vs. Jetmull Bhojraj and Another*, .

(13) I am fully conscious of the view that the construction of a particular expression in one statute need not follow the construction of the same expression in the other statute and we have to take into consideration language used, the object of the Act, the preceding provision of law, the mischief which was sought to be remedied and the intention of the legislature in enacting the provision. The corresponding provision in the old Customs Act, 1878 was sub-section (1) of section 122, which ran as follows:

"IF any goods in respect of which a bond has been executed u/s 92 and which have been cleared for home consumption are lost or destroyed by unavoidable accident or delay, the Chief Customs-officer may in his discretion remit the duties due thereon. Provided that, if any such goods be sold or destroyed in a private warehouse, notice thereof be given to the Customs-collector within forty-eight hours after the discovery of such loss or destruction "

In the bill proposing the present Act, clause 23 dealt with the subject and the note on the same read as follows :

"SUB-CLAUSE(1) replaces existing section 122. Under the existing section remission of duty is permissible only if goods are lost or destroyed by unavoidable accident or delay. Under the revised provision remission of duty may be allowed in all cases where goods are lost or destroyed whatever may be the reason. Since cases of total loss or destruction cause considerable hardship, a generous approach is being made. Further, the new provision will specifically permit remission of duty not only in respect of warehoused goods as at present but also in respect of other goods which are cleared direct for home consumption. Importers will welcome this relief. Sub-clause (2) replaces the last para of existing section 100 and lays down that the proper officer may require that the abandoned goods should be surrendered to the Customs Department. Again, the concession in the proposed provision will specifically cover not only warehoused goods which alone enjoy the concession at present but also goods cleared direct for home consumption .This would be an additional relief to importers whose goods have completely deteriorated."

The note on the clause, Therefore, lends support to the view that the expression "lost or destroyed" in the relevant provision of the Act is not used in any narrow or a particular sense, but in a broader sense and includes the loss for destruction caused by whatsoever reason. From THE language used and the departure from the previous provision of law, it is obvious that the Parliament intended to give relief to the party for remission of the duty on the goods which had been imported and which were lying stored in a public place and which have been lost to the owner for no fault of his whether the goods have been lost or destroyed on account of theft, fire, accident or any other circumstances or cause

whatsoever .It is difficult to construe the provision as including all kinds of loss and destruction, but excluding the loss by pilferage. There is no warrant for this narrow construction. Mr. Nanda submits that the relief in respect of pilfered goods is specifically granted u/s 13 of the Act, but that provision applies only to the stage before the order for home consumption has been passed. What is the remedy if the goods are pilfered after the passing of the order but before they are actually cleared. For that purpose section 23 applies and there is no valid reason for drawing a distinction that the duty is liable to be remitted if the goods are after the payment of the duty and before their actual clearance lost or destroyed in any other manner excepting their theft .Theft of the goods in the said circumstances cannot stand on a different footing. It is, Therefore, reasonable to hold that the expression" lost or destroyed" is used in the generic and comprehensive sense and includes within it the case of loss to the party by pilferage. In this view of the matter, the claim of the petitioner must succeed and the contention of Mr. Nanda is rejected.

(14) As a result, the writ petition is allowed and the impugned orders of the Central Government are set aside and the respondents are directed to consider the claim preferred by the petitioner afresh in the light of the rule of law laid down in this judgment. In the circumstances of the case, the parties are left to bear their own costs.