
(1979) 02 MAD CK 0020

In the Madras High Court

Case No : W.A. No. 248 of 1975 against W.P. 2185 of 1974

Durga Shankar Industries

APPELLANT

Vs

Government of India and Another

RESPONDENT

Date of Decision : 06-02-1979

Acts Referred:

Customs Act, 1962 — Section 25, 27, 27(1)
Sea Customs Act, 1878 — Section 40

Citation : (1979) CENCUS 213 : (1979) 4 ELT 227 : (1979) ILR (Mad) 257

Hon'ble Judges : Sengottuvelan, J;Ramanujam, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ramanujam, J.—The appellant herein, a proprietary concern, is carrying on business as manufacturers of hospital equipments etc. It

obtained a licence for the import of stainless steel sheets in coils as an actual user. The appellant on the basis of the said licence imported certain

consignments of stainless steel between September 1969 and October 1971. On the said consignments, import duty was levied under Item 87 of

the Tariff at 100 per cent ad-valorem. After payment of the said duty and after clearing the consignment, the appellant came to know that the

consignment of stainless steel imported by it is entitled to the benefit of Notification No. 118-Customs, dated 20-8-1965, as amended by

Notification No. 138-Customs, dated 25-8-1965, which reduces the import duty to 10 per cent ad valorem in cases of import of stainless steel

strips of 250 millimetres of width or more. On the ground that the stainless steel imported by the petitioner was stainless steel strips of 1,000

millimetres width, the appellant on 29-9-1972, claimed refund of 90 per cent of

the duty as excess duty collected from it. The refund application filed by the appellant on 29-9-1972, was based on the said Notification No. 118, dated 20-8-1965, which granted concession of lower rate of excess duty in the case of import of stainless steel strips exceeding 200 millimetres in width. The appellant's application for refund was rejected by the Assistant Collector of Customs on the ground that the application for refund having been filed after the expiry of the time limit of six months prescribed u/s 27 of the Customs Act, 1962, the same was barred and, therefore, the appellant's claim for refund cannot be considered on merits.

2. There was an appeal to the Appellate Collector of Customs. That appeal also failed, the appellate authority taking the view that the provisions of Section 27 fixing six months period for preferring a claim for refund being mandatory, the appellant's application for refund cannot be entertained especially when the payment of the import duty by the appellant was not under protest. Then, there was a revision to the Government of India u/s 131 of the Customs Act. The revisional authority also took the view that the appellant not having claimed refund within the time limit contemplated by Section 27 of the Customs Act, the appellant's claim for refund has rightly been rejected by the authorities. As against the order dated 10-8-1973 of the revisional authority, the appellant filed W.P. No. 2185 of 1974. The said writ petition was dismissed at the admission stage by Ismail

J.

3. The view taken by the learned Judge was that Section 27(1) of the Customs Act having prescribed a time limit for preferring a claim for refund and the appellant not having made the claim within the prescribed time limit and it not having paid the import duty under protest, its claim for refund has rightly been rejected by the authorities constituted under the Act. The said view of the learned Judge has been challenged in this writ appeal.

4. The learned counsel for the appellant contends that the appellant's claim cannot be said to be time barred u/s 27(1), that Section 27(1) will apply only to a case where there is a valid assessment but not to a case where the assessment itself will be illegal and without jurisdiction, that in this case, the goods imported by the appellant have been wrongly treated as stainless steel sheets while in fact they are stainless steel strips which are to be assessed at a lower rate of 10 per cent ad valorem as against 100 per

cent ad valorem for stainless steel sheets, that the assessment in respect of the stainless steel strips imported by it treating them as stainless steel sheets will be clearly with-out jurisdiction and that in respect of such assessment made without jurisdiction, the limitation provided for u/s 27, cannot apply.

5. In support of the appellant's contention that Section 27(1) will not apply to its claim for refund, reference has been made to the decision of the

Supreme Court in *Patel India v. Union India*, AIR 1973 S.C. 1300. In that case, the Supreme Court has proceeded on the basis that wherever an

assessment has been made and excess duty has been collected under the Sea Customs Act, without authority of law, the limitation provided for in

Section 40 of that Act will not apply and that the aggrieved party is entitled to claim refund without reference to the time limit prescribed in Section

40. In Section 40 of the Sea Customs Act, 1878, a time limit of three months has been prescribed for claiming refund of the excess duty paid by a

party. The Supreme Court construing that provision pointed out that the said section will apply only to cases where duties have been paid through

inadvertence, error, misconstruction or miscalculation and that only in those instances, the refund application has to be made within three months

from the date of the payment. It was pointed out by the Supreme Court that there was a legal obligation on the part of the Government to return

the excess duty if really the said excess duty was not payable by the party under the provisions of the Sea Customs Act, and a corresponding legal

right in the party to recover it, and such a right cannot be defeated on the basis of the limitation prescribed in Section 40.

6. The learned counsel also refers to a decision of Koshal J. as he then was in *Premraj and Ganpatraj and Company (P.) Limited* (Now known as

Madras Electrial Conductors (P.) Limited) Vs. The Assistant Collector of Customs and Others, . In that case, the scope of Section 27 of the

Customs Act came up for consideration. That was also a case of the application of wrong Tariff on the basis of a wrong classification. Long after

the import and clearance of the goods from the Customs, the party concerned came to know that the goods have been wrongly classified and a

higher duty has been paid. Thereafter, the party filed an application for refund after the period of six months prescribed in Section 27. When that

claim was rejected by the authorities on the basis that it was barred u/s 27, the matter was taken to this court and Koshal J. dealing with the matter

held that though the claim has rightly been rejected as time barred in view of the provisions of Section 27 of the Act, this court in exercise of its

powers under Article 226 of the Constitution can issue a mandamus directing the refund as the recovery of the excess duty was clearly in

contravention of the relevant notification and, therefore, the collection of excess duty should be taken up without jurisdiction, so that the same is

liable to be refunded. This view of the learned Judge gets support from the decision of Ram Prasad Rao J. as he then was in W.P. No. 3251 of

1970. The decision of Koshal J. was taken in appeal to the Division Bench of this Court in Asst. Collector of Customs, Madras v. Premraj and

Ganpatraj Co. Madras Electrical Conductors (P) Ltd., 90 L.W. 719. The decision of Koshal J. has been affirmed in appeal and the view taken by

the Division Bench was that the levy of import duty will also be subject to the provisions of Article 265 of the Constitution which gives a mandate

that no tax shall be levied or collected except by authority of law, that there being admittedly an excess collection of import duty, the party who has

paid the excess duty is entitled to get a refund of the same and that though the authorities cannot entertain a revision application u/s 27 of the

Customs Act, beyond a period of six months from the date of payment, that will not inhibit the court from granting the necessary relief by way of

Mandamus directing the authorities to refund the duty which was collected without the authority of law. Having regard to the said decision of the

Bench, with which we respectfully agree, we have to hold that even if the appellant's claim for refund cannot be considered by the authorities

below, in view of Section 27 of the Customs Act, this court can grant relief to the appellant by issuing a writ of mandamus if it is found that the

excess import duty collected from it was without authority of law or was contrary to the statutory notifications issued u/s 25 of the said Act.

7. We are also inclined to hold that if the collection of import duty from the appellant was contrary to the statutory notifications, the period of

limitation contained in Section 27 cannot apply to the facts of this case in view of the decision of the Supreme Court in Patel India Private Limited

Vs. Union of India and Others, and that, in any event, Section 27 will not stand in the way of this court granting the relief under Article 226 of the

Constitution. But in this case, the authorities below have not gone into the merits of the appellants contention that the assessment in this case was

contrary to the relevant statutory Notifications. There is no finding given by any of the authorities on this aspect and they have merely proceeded to

reject the appellant's claim on the ground of limitation. Therefore, it is not possible to issue a writ of Mandamus in the absence of such a finding.

Only if it is found that the collection of tax was contrary to the statutory notifications, the appellant is entitled to be given a relief by way of refund.

The first respondent's order is, therefore, quashed with a direction to consider the question referred to above and refund the excess duty collected

if it is found that collection of duty was contrary to the statutory notifications.

8. The appeal is accordingly allowed, and a rule will issue as indicated above. There will be no order as to costs.

9. Having regard to the fact that the claim for refund is pending for a long time, the revisional authority will dispose of the matter as expeditiously as possible.