(2006) 10 DEL CK 0030

In the Delhi High Court

Case No : Writ Petition (C) 3906 of 1990

Erica Enterprises and Another — APPELLANT

Vs

The Asstt. Collector of Customs (Refund) — RESPONDENT

Date of Decision : 12-10-2006

Acts Referred:
Customs Act, 1962 — Section 27(1), 27(2)

Citation : (2006) 134 DLT 225 : (2006) 92 DRJ 346 : (2006) 112 ECC 164 : (2006) 138 ECR 164 : (2007) 207 ELT 55

Hon'ble Judges : Vikramajit Sen, J;Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : T.P.S. Kang and M.M. Alam, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.

CM. No. 5803/2006

1. This writ petition was dismissed in default on 7.3.2006. The present application has been filed for the restoration of the said writ petition stating that matter was not noted in the list and since the learned Counsel for the petitioner was not present in Delhi, no representation was made on his behalf for seeking adjournment. An affidavit of the clerk of the learned Counsel has been filed.

In view of the reasons stated in the said application, this application is allowed and the writ petition is restored.

WP(C) 3906/1990

1. This writ petition challenges a notice dated 23.10.1990 issued by the Assistant Collector of Customs (Refund) requiring the petitioner to attend a hearing together with the documentary evidence in support of his claim for a refund of Rs. 1,13,293.20 along with interest.

2. At the time of filing the writ petition, the grievance of the petitioner was that Customs authorities had no power to demand proof from the petitioner for having not passed on the burden of customs duty in order to be entitled for the refund. However, during the pendency of the writ petition the Customs Act, 1962 was amended by the Excise and Customs Laws (Amendment) Act, 1991. As per the amended Section 27(1) the application for refund has to be accompanied by "such documentary or other evidence 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, or collected from, or paid by him and the incidence of such duty and excise, if any, paid on such duty had not been passed on by him to any other person." The proviso to Section 27(1) states that where the application for refund has been made before the commencement of the Amendment Act, 1991 such application has to be deemed to have been made under this Sub-section and the same shall be dealt with in accordance with the provision of Sub-section (2). Under Sub-section (2) of Section 27, if the applicant is unable to show that he had not passed on the incidence of duty to any other person, then the amount of refund is to be credited to the Consumer Welfare Fund.

3. In view of this development, this Court on 22.10.1991 directed the concerned officer to pass an appropriate order on the petitioner''s application for refund of customs duty. Pursuant thereto, by an order dated 27.11.1991, the Assistant Collector of Customs (Refund) passed an order holding that no evidence had been produced by the petitioner to confirm that the duty burden had not been passed to the consumers/buyers. Accordingly the Assistant Collector Customs (Refund) directed the refund amount to be deposited in the Consumer Welfare Fund.

4. Thereafter, the petitioner filed CM No. 1310/1992 in this Court assailing the said order dated 27.11.1991 and praying that the refund be granted to the petitioner along with interest.

5. On an examination of the order dated 27.11.1991 it is seen that the petitioner was unable to produce any evidence to show that the customs duty of which refund was sought has not been passed on to the consumers. It has been recorded in para 5 of the said order as under:

5. During the course of personal hearing, the importer Along with their Advocate, tendered the written submissions Along with its enclosures, indicating therein the market price of the goods imported prevalent on the date of import and the invoice price, but failed to produce any evidence clearly indicating that part of the disputed amount claimed as refund, which was actually part of the customs duties as assessed at the time of adjudication, and no evidence has been produced to confirm that the duty burden has been/has not been passed on to the consumers/buyers.

6. In CM. No. 1310/1992, the petitioner now seeks to challenge this order where

it is asserted that "the petitioner has placed each and every material for the satisfaction of the learned Assistant Collector of Customs which he has failed to consider." The petitioner relies on the Minutes of the personal hearing before the Collector on 12.11.1991 which records the statement made by the assessed that from the market price of the imported item which had been accepted by the Officers " it is abundantly clear that duty burden of customs duty has not been passed on." However, the Assistant Collector of Customs did not accept this statement of the petitioner and made the following endorsement below the statement:

They are asked to produce the refund annexure and their evidence from their (Claimants) records.

7. Thereafter, the Assistant Collector passed a detailed order dated 27.11.1991 rejecting the petitioner''s application for refund. In the light of the above findings of fact by the Assistant Collector of Customs and in the absence of any material produced by the petitioner to show to the contrary, it is clear that the petitioner has failed to produce the evidence contemplated u/s 27(1) of the Act read with Section 27(2) thereof. Therefore, no fault can be found in the order dated 27.11.1991 of the Assistant Collector of Customs.

8. For these reasons, the writ petition is dismissed with no order as to costs.

