

(1987) 01 DEL CK 0003

In the Delhi High Court

Gemini Metal Works

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 01-01-1987

Acts Referred:

Citation : (1988) 16 ECC 21 : (1988) 17 ECR 588 : (1987) 32 ELT 515

Hon'ble Judges : S.S. Chadha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.S. Chadha, J.—This petition under Articles 226 and 227 of the Constitution of India seeks a writ of certiorari to quash the orders made by the Assistant Collector of Customs rejecting the claim for refund of payment holding that the goods imported, being of 20" width, do not conform to the requirements for "strips" and Therefore they are classifiable only as sheets under Item 63(20)A ICT; the order of the Appellate Collector of Customs rejecting the appeal as barred by time and the order the Central Government rejecting the revision application.

2. The petitioner imported one consignment of various quantities of stainless steel strips through Madras Port under valid import licenses granted to them. The Customs Authorities at Madras classified the goods in question as stainless sheets and collected 100% duty under Item No. 63(20A) of the Indian; Customs Tariff. According to the case of the petitioner, he was under the bonafide mistake that whatever duty was collected by the Customs Authorities was in accordance with law. Later on the petitioner made a clime for refund of the customs duty which had been levied and paid in excess. The basis of the claim for refund is that the stainless steel strips imported by the petitioner come within the tariff Item 63(14) and Government of India, Ministry of Finance Notification No. 118/65 dated August 20, 1965 as amended vide Notification No. 138-Customs dated August 25, 1965, cold rolled hoops and strips of stainless of 250 mm width or more falling under this item are exempt from the payment of Customs duty as

is in excess of 10% and valorem.

3. In the order dated October 14, 1972 and dispatched on December 2, 1972 rejecting the refund claimed by the petitioner, the only reason given is that the goods imported, being of 20" with, do not conform to the dimensional requirements for strips and they are therefore classified as sheets under Item Mo. 63(20A) ICT. The petitioner filed an appeal before the Appellate Collector of Customs, Madras against the order that the Appellate Collector of Customs did not issue any notice to the appellant for hearing of the appeal and proceeded to determine the appeal. It appears from the record that it is so. The Appellate Collector of Customs makes a mention that the order of the Assistant Collector of Customs, Madras dated October 19, 1972 was dispatched on November 28, 1972 and would have been received by the appellants within the next two or three days whereas the appeal was received in the office on March 23, 1973 i.e., after the expiry of the three months time limit specified u/s 128 of the Customs Act, 1962. The Appellate Collector of Customs then proceed to record that no reasons have been adduced to show that the appellants were prevented by sufficient cause from preferring the appeal within the time allowed by the statute.

4. The inference drawn by the Appellate Collector of Customs that the order passed by the Assistant Collector of Customs must have been received within two or three days is not supported by the material on record or by any reason. The order was made on October 19, 1972 and stated to have been dispatched on December 2, 1972. There is no explanation on the record as to why such a long time was taken in the dispatch of the order. There was no basis to presume that the petitioner must have recited the order within two or three days. If the petitioner had been afforded an opportunity of showing cause as to when the order of the Assistant Collector of Customs was received by him, the petitioner would have furnished that material. The petitioner might have believed that the appeal was being preferred within the period of three months and for this reason did not make any application for condensation of delay or disclosing any sufficient cause as to why he was prevented from preferring the appeal within the time allowed u/s 128 of the Act. The order of the Appellate Collector of Customs is without affording any opportunity to explain the position as to how the appeal was considered as within time or if not within time, whether the petitioner was prevented by sufficient cause or not.

5. Counsel for the petitioner has also urged on merits that the goods imported by the petitioner fall within the definition of Item 63(14) of the Indian Customs Tariff and the customs duty is livable thereon as per Notification No. 118-Customs dated 20-8-1965 as amended at the time of application. A number of authorities have been cited at the Bar of the various High Courts. I am not advertng to those authorities as I am Customs to remand the appeal back o the Appellate Collector of Customs for determination of the appeal on merits after affording an opportunity to the petitioner.

6. Accordingly the writ petition is allowed. The impugned orders of the Appellate

Collector of Customs and the orders passed by the Central Government are hereby quashed. The Appellate Collector of Customs shall determine the appeal of the petitioner afresh after affording the petitioner an opportunity of being heard, within a period of three months from the date of the receipt of this order from this Court. There will be no order as to costs.