(1993) 06 BOM CK 0001

In the Bombay High Court

Case No : Writ Petition No. 2386 of 1983

Gopinath Vasudeo Datar APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 23-06-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 27

Citation : (1993) 67 ELT 56

Hon'ble Judges : M.L. Pendse, J;A.P. Shah, J

Bench : Division Bench

Judgement

Pendse, J.—The petitioner an order for import of methyl ethyl ketene from the sellers in Netherlands. The consignment arrived by ship on February 15, 1979 and the petitioner filed bill of entries for home consumption. The Assistant Collector of Customs completed the assessment and the petitioner paid duty of Rs. 27,442.26. The petitioner thereafter sought delivery of the imported article but could not get the same. The petitioner was directed to the barge owners and even the barge owners could not find the imported goods. The petitioner thereupon filed criminal complaint against the barge owners on February 13, 1980 and the Metropolitan Magistrate appointed the Commissioner to visit the barges and ascertain whether the imported goods are available. The Commissioner made a report on February 21, 1980 that the imported goods are not traceable.

2. On February 22, 1980 the petitioner filed claim for refund of duty paid in respect of goods which were not traceable. The Assistant Collector of Customs rejected the application on the ground that the date of payment and therefore the claim could not be entertained. The petitioner preferred an appeal before the Customs, Excise and Gold (Control) Tribunal, but the appeal ended in dismissal by order dated April 5, 1983. A revision application preferred by the petitioner also met with the same fate. The petitioner is challenging the legality of these orders in this petition filed under Article 226 of the Constitution.

3. Shri Deodhar, learned counsel appearing on behalf of the petitioner, submitted that it is not in dispute that the goods imported were not available for clearance and therefore the duty paid by the petitioner is liable to be refunded. Shri Deodhar submits that the department has declined to refund the amount only because of the provisions of Section 27 of the Customs Act. It demands that application for refund should be filed within a duration of six months from the date of the payment. Shri Deodhar submits that though the departmental authorities are bound by the provisions of Section 27 of the Act, this Court while exercising jurisdiction is entitled to direct the refund once it is established that the deposit was without any authority of law. As the respondents have recovered the duty even when the goods were not available, the recovery of duty is without any authority of law and the petitioner is entitled to the relief claimed.

4. Accordingly, petition succeed and rule is made absolute in terms of prayer (b) save and except the claim for interest. The respondents are directed to refund the amount forthwith. The respondents shall pay the costs of the petition.