(1980) 10 DEL CK 0023

In the Delhi High Court

Case No : Civil Writ Petition No. 1214 of 1969

Hindustan Dewidat Tools Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 21-10-1980

Acts Referred:

Citation : (1981) 8 ELT 1

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

Bench : Single Bench

Judgement

1. This petition under Articles 226 and 227 of the Constitution of India seeks a writ of certiorari for quashing the order passed by the authority under the Customs Act, 1962 dismissing the application of the petitioner for refund of duty on three cases of Broaches Ex. SS. Tannenfels, B/E cash No. 2697/13/7/66 R.A. dated December 16, 1966.

2. The petitioner imported three cases of broaches from West Germany vide invoice No. - A-411 30/4 dated April 13, 1966, Bill of Entry Cash No. 2697/13/7/66 dated December 16, 1966. The said three cases arrived at the Bombay Docks by Vessel named S.S. Tannenfels on May 7, 1966 and custom duty had been assessed under ICT No. 71(a) at the rate of 60% + 10% totalling Rs. 30,586.60 and the said duty was duly paid.

3. It appears that when the clearing agents of the petitioner went to take delivery, the three cases were found to be missing. The petitioner by letter dated June 15, 1966 reported to the Enquiry Officer, Allexandra Docks, Bombay that the said three cases are not traceable in the docks. A request was made to appoint a tracer in the docks and to intimate the petitioner as soon as the goods are traced out. The Enquiry Officer by his letter dated June 20, 1966 informed the petitioner that out of three cases, one case is lying on third floor in bay No. 142 at ''A'' W/House A.D. The two cases is were reported to be not traceable. The clearing agents of the petitioner found case No. 3 in broken condition and requested for arranging immediate survey of the broken case in the letter dated

July 6, 1966.

4. There is a dispute relating to the facts as to when the cases were out of charge and I am not inclined to refer those facts at this stage. The petitioner obtained the shortage certificate from the Bombay Port Trust and filed a claim for the refund of the duty u/s 13 of the Customs Act, 1962 (here-in-after called the Act). The claim of refund was rejected by the Assistant Collector of Customs by order dated June 20, 1967. Any person aggrieved by order passed under the Act may within three months from the date of the communication of such order; (a) where the decision or order has been passed by a Collector of Customs, appeal to the Board; (b) where the decision or order has been passed by an officer of customs lower in rank than a Collector of Customs; appeal to the Appellate Collector of Customs. This is so provided in Section 128. The Proviso provides that the Appellate Authority may, if it is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of three months, allow it to be presented within a further period of three months.

5. It is not disputed that the petitioner received a copy of the order dated June 20, 1967 passed by the Assistant Collector of Customs, Bombay on June 28, 1967. The copy of the order filed on record by the petitioner mentions :-

"An Appeal against this order lies to Collector of Customs, Central Board of Revenue, New Delhi/Simla within three months from the date of its dispatch shown above."

6. The petitioner preferred an appeal on September 16, 1967 and was received by the Central Board of Revenue, New Delhi on September 19, 1967. The appeal was returned to the petitioner by the Central Board of Revenue, New Delhi, with the remarks :-

"Returned in Original with the remarks that the Appeal against the orders of A.C. Customs, Appraisement Department (Refund Section) lisle with the Appellate Collector of Customs, Bombay and not with the Collector of Customs, Central Board of Excise and Customs, New Delhi as addressed by you. The Appeal may please be addressed to the proper authority and dispatched accordingly."

7. The petitioner then dispatched the memorandum of appeal with the letter dated September 28, 1967 explaining the circumstances that the appeal was filed to the Collector of Customs, Central Board of Revenue, New Delhi as the order itself mentions that the appeal was to be filed to the Collector of Customs, Central Board of Revenue.

8. By the impugned order dated March 30, 1968, the Appellate Collector of Customs, Bombay dismissed the appeal as barred by time after recording a finding that the appeal dated September 28, 1967 was received on October 5, 1967 after the expiry of a period of three months from June 28, 1967, the date of the receipt of the Assistant Collector''s orders dated June 20, 1967. It is further stated that there was no satisfactory Explanation for delay.

9. The finding recorded by the Appellate Collector of Customs that there was no satisfactory Explanation for delay is clearly perverse and cannot be sustained. The appeal u/s 128 of the Act lies to the Appellate Collectors of Customs as the order was passed by an officer of Customs lower in rank than the Collector of Customs. The copy of the order served on the petitioner, however, mentions that the appeal against the order lies to the Collector of Customs, Central Board of Revenue, New Delhi. The copy filed with the counter-affidavit, however, mentions that the appeal lies to the Appellate Collector of Customs, Bombay. I called upon the counsel for the respondents to produce the original records to show whether the copy filed by the petitioner is a true and correct copy of the order served on the petitioner. The counsel for the respondents is unable to produce the same. The copy of the order (Annexure ''R-1'') is also not attested as a true copy by any competent authority. The counter-affidavit also does not say that the copy of the order dated June 20, 1967 filed along with it is the true and correct copy of the original. On these facts, there is no reasonable basis to hold that the copy served on the petitioner did not say that the appeal lies to Collector of Customs, Central Board of Revenue, New Delhi. When the appeal was returned to the petitioner and was re-filed along with the letter dated September 28, 1967, the petitioner stated in the first sentence that as per order No. S/6-5545/66R dispatched on June 20, 1967, the appeal was to be made to the Collector of Customs, Central Board of Revenue, New Delhi/Simla and accordingly, the petitioner submitted an appeal to the Collector of Customs, Central Board of Revenue, New Delhi. The appeal was received back by the petitioner on September 28, 1967 and it was re-filed on that very day. The re-filing letter contained in extended the reproduction of the memo issued by the Central Board of Revenue. The petitioner had disclosed sufficient cause for not presenting the appeal to the Appellate Collector of Customs within the period allowed u/s 128 of the Act. The Appellate Collector of Customs, Bombay has not properly considered the material on the record which explained the delay in filing the appeal.

10. For the above reasons, the impugned order dated March 30, 1968 is quashed as also the subsequent orders. The Appellate Collector of Customs, Bombay will hear the appeal of the petitioner on merits after giving an opportunity to the petitioner of being heard and the appeal may be disposed of in accordance with law. On the facts and circumstances of the case, I make no order as to costs.