
(1979) 07 CAL CK 0034
In the Calcutta High Court
Case No : Civil Rule No. 13124 of 1975

Incheck Tyres Ltd.

APPELLANT

Vs

Assistant Collector of Customs

RESPONDENT

Date of Decision : 24-07-1979

Acts Referred:

Customs Act, 1962 — Section 128, 130

Citation : (1981) 8 ELT 169

Hon'ble Judges : Dipak Kumar Sen, J

Bench : Single Bench

Advocate : S.S. Ray and S.N. Mukherjee, for the Appellant; S.N. Banerjee, for the Respondent

Final Decision : Allowed

Judgement

Dipak Kumar Sen, J.—Incheck Tyres Ltd. the petitioner in these proceedings seeks to challenge three orders, being under No. S-85-4/72R dated 12th June, 1972 of the Assistant Collector of Customs (Refund), No. 1416 of 1973 dated 17th April, 1973, passed by the Appellate Collector of Customs, Calcutta and No. 1393 of 1974 dated 30th March, 1974 of the Joint Secretary, Government of India.

2. The facts leading upto the present proceedings are as follows :

The petitioner is a company within the meaning of Companies Act, 1956 and carrying on business, inter alia, as manufacturers of rubber tyres. For the purpose of such manufacture it imports insoluble sulphur under the trade name "crystal N-Insoluble Sulphur" (hereinafter referred to as the said product) in bulk quantities. Under a notification issued by the Government of India Ministry of Finance (Department of Revenue & Insurance) being Notification No. 120-Customs, dated 20th August 1965, sulphur including the said product was stated to be exempt from duty under Indian Customs Tariff.

3. In respect of a particular consignment of the said product imported by the

petitioner and under Bill of Entry No. 894 and D.I. 929 dated the 20th and 21st November 1969 respectively. Duty was wrongly charged by the customs authorities under item 28 of the Customs Tariff at the rate of 60% ad valorem. To avoid demurrage, the petitioner paid the duty as levied and cleared the goods and applied before the Assistant Collector of Customs, Refund Section, Calcutta, the respondent No. 1 for refund. The said claim was rejected. Against the said order the petitioner preferred appeal to the Appellant Collector of Customs, who by his order dated the 12th July, 1971 set aside the order of the Assistant Collector of Customs holding that the goods in question were not chargeable to duty under item 28(3) of the Customs Tariff read with the said notification dated 20th August, 1965. The Customs authorities did not prefer any revision against the said order and the same became final. In the meantime on the 4th May, 1972 another consignment of the said product imported by the petitioner was landed under Bill of Entry No. D.I. 208 and duty on the same was again levied wrongfully under item 28. The petitioner cleared the said goods on payment under protest and applied for refund of duty paid being Rs. 46,605.63. The respondent No. 1 by his order dated the 12th June, 1972, rejected the petitioner's claim for refund. On or about the, 28th February, 1973 the petitioner made an application u/s 130 of the Customs Act, 1962 before the Collector of Customs, the respondent No. 3 for revisions of the said order, under notification No. 101-Cus., dated the 1st July 1974, the respondent No. 3 was empowered to revise any orders passed by officer subordinate to him under the Customs Act, 1962 except appellate orders passed u/s 128 of the said Act. The petitioner's grievance is that the Collector of Customs wrongly and without jurisdiction forwarded the same to the Appellate Collector of Customs, Calcutta, the respondent No. 2 to be dealt with as an appeal u/s 128 of the Customs Act, 1962. By his order dated the 17th April, 1973 the respondent No. 2 rejected the said application holding that the same had been filed after the expiry of the time prescribed for appeals u/s 128 of the said Act.

4. Being aggrieved thereby, the petitioner applied for a further revision to the Joint Secretary, Government of India, Ministry of Finance (Revenue and Insurance). By his order dated the 30th March, 1974 the Joint Secretary dismissed the said application.

5. The petitioner contends that the orders impugned are ex facto erroneous and without jurisdiction. The petitioner further contends that admittedly though the goods were importable without any duty, the authorities had levied such duty wrongfully and illegally. The respondent Nos. 2 and 3 in making the said impugned order acted without any jurisdiction. The respondent No. 3 delegated the matter to the respondent No 2 to be treated as an appeal u/s 128 of the Act and the respondent No. 2 erred in treating the same to be an appeal and disposed of the same by holding that it was barred by limitation though he held that the said product could be imported free of duty.

6. The present Rule was issued on the 21st April, 1975 calling upon the

respondents, viz. the Assistant Collector of Customs, Calcutta, Refunds Sections, the Collector of Customs, Calcutta, the Joint Secretary, Government of India, Ministry of Finance and the Union of India, to show cause why appropriate writs should not be issued directing them to consider the petitioner's claim for refund in accordance with law for setting aside and quashing the impugned orders.

7. This application is opposed on behalf of the respondents and an affidavit of one Dilip Kumar Sana affirmed on the 15th September, 1978 has been filed in opposition to the petition. An affidavit affirmed by the Finance Manager of the petitioner on 27th November, 1978 has been filed in reply thereto.

On consideration of the relevant Sections of the Customs Act and in the facts of the instant case, it appears to me that the respondents have no answer to the Rule. It is undisputed that the petitioner filed an application for revision u/s 130 of the Customs Act. The respondent Nos. 2 & 3 had no jurisdiction or authority to treat the same as an appeal u/s 128 of the Act and deal with the same, as an appeal.

8. For the reasons above, the petitioner is entitled to succeed in this application. The Appellate Collector of Customs in the impugned order dated the 30th March, 1974 has found clearly that there was no manner of doubt that the consignment in dispute was properly classifiable under item 28(3) of the Indian Customs Tariff read with its footnote and was "free of duty". Accordingly to remand the matter for fresh revision would be an idle formality. A writ in the nature of certiorari will issue to set aside the three impugned orders respectively dated the 12th June, 1972, the 17th April, 1973 and the 30th March, 1974. A writ in the nature of Mandamus will also issue directing the respondents to act according to law and refund the said sum of Rs. 46,605.63 to the petitioner expeditiously.

9. The Rule is made absolute to the extent aforesaid!" There will be no order as to costs.