(1999) 10 SC CK 0113

In the Supreme Court Of India

Case No : Civil Appeals Nos. 10219-25 Of 1983

Jeevanlal and Co. APPELLANT

Vs

Collector of Customs, Bombay RESPONDENT

Date of Decision : 12-10-1999

Acts Referred:

Citation : (2000) 9 SCC 733

Hon'ble Judges : N. Santosh Hedge, J;B. N. Kirpal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. In these cases we are concerned with the export of goods by the appellant covered by seven shipping bills. These seven shipping bills resulted in export of cargo in two lots. One lot consisted of four shipping bills and the other of three shipping bills.

2. As per the finding of fact recorded by the Tribunal in regard to one shipping bill the rate of duty was Rs. 1100 per quintal in respect of the item sought to be exported. This rate was altered and was enhanced to Rs 1300 per quintal with effect from 13/09/1977. The case of the appellant was that the shipping bills had been presented prior to 13/09/1977 and, therefore, the rate of duty prevalent, namely, Rs.1100 per quintal should be levied. It was also contended on behalf of the appellant that the goods had been first loaded at flash barges on 3/09/1977 and that this is the date which should be considered as the date of loading the goods as contemplated by Section 39 of the Customs Act.

3. The Tribunal found as a fact that application for entry outwards was made on 19/09/1977 and the order granting entry outwards was made on 6/10/1977. Considering the provision of Section 16 of the Customs Act the Tribunal came to the conclusion that when the shipping bill is submitted on a date prior to the date of entry outwards then as per the proviso to the said Section 16 the date of entry outwards is deemed to be the date of shipping bill. It is the rate of duty which is

effective on that date which has to be levied on the cargo which was exported. Applying the rate of Rs 1300 per quintal, which was the rate which was effective after 13/09/1977 that was charged from the appellant. Section 16 reads as follows:

"16. (1) The rate of duty and tariff valuation, if any, applicable to any export goods, shall be the rate and valuation in force,

(A) in the case of goods entered for export under Section 50, on the date on which a shipping bill or a bill of export in respect of such goods is presented under that section;

(B) in the case of any other goods, on the date of payment of duty:

Provided that if the shipping bill has been presented before the date of entry outwards of the vessel by which the goods are to be exported, the shipping bill shall be deemed to have been presented on the date of such entry outwards."

4. In Principal Appraiser (Exports), Collectorate of Customs and Central Excise v. Esajee Tayabally Kapasi Section 16 was interpreted to mean that the rate applicable is the one prevalent on the day when entry outwards of the vessel which actually carried the goods for effecting export was obtained, when the shipping bills have been presented before that day. It is clear from this that sending the cargo on barges was of no relevance with regard to the question of the rate of duty applicable. What was relevant was the date of entry outwards which was subsequent to the date of the shipping bill. The proviso to Section 16(1) was clearly applicable and therefore the Tribunal was right in coming to the conclusion that as application for entry outwards was filed, after 13/09/1977, therefore, it is the higher rate of Rs 1300 per quintal which had to be charged and the date of shipping bill or loading the goods on the barges was irrelevant.

5. With regard to the lot of three shipping bills the duty was reduced from Rs 1300 to Rs 700 per quintal as per notification dated 17/10/1977. The shipping bills were presented before 17-10-1977. In the memorandum of appeal filed before the Appellate Collector of Customs it was stated that the entry outwards was granted on 29/10/1977 and the shipping bills must therefore be deemed to have been presented as on that day.

6. The Collector of Customs has not found as a fact that application for entry outwards in respect of the ship Marjem, on which the consignment went, was presented on 29/10/1977. Against the order of the Collector of Customs, Bombay, revision petition was filed before the Government and no such plea was taken therein that the date of the grant of entry outwards was after 17/10/1977. This revision petition was transferred to CEGAT and in the order of CEGAT there is no reference or mention of the date of entry outwards in respect of these three consignments even though in respect of the four other consignments, to which we have referred hereinabove, CEGAT had given its decision with reference to the date of entry outwards. Except for mentioning in the memorandum of appeal

before the Collector that the date of entry outwards was 29/10/1977, no document has been placed on record by the appellant for substantiating the said averment. Neither the Appellate Collector nor CEGAT has determined what was the date of entry outwards. We are, therefore, not in a position to accept that the date of entry outwards was 29/10/1977, as contended by the learned counsel for the appellant. In the absence of any material on record which can satisfy us that the date of entry outwards was 29/10/1977 we do not see any reason to differ from the decision of CEGAT with regard to these three consignments as well.

7. For the aforesaid reasons these appeals are dismissed with costs.