(1986) 01 BOM CK 0016

In the Bombay High Court

Case No : Writ Petition No. 1530 of 1983

Metal Distributors Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 21-01-1986

Acts Referred:
Customs Act, 1962 — Section 17(1)

Citation : (1988) 19 ECR 324 : (1988) 37 ELT 512

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

1. Petitioner No. 1 are a Limited Company and carry on business as metal distributors and importers of diverse ferrous and non-ferrous metals. Pursuant to the contracts between the petitioners and the foreign suppliers, during October 1979 and February 1980 diverse quantities of alloy steel scrap was shipped by the foreign suppliers. The petitioners imported 733.212 metric tonnes of the goods and upon importation of the goods between October 15, 1979 and February 1980 the petitioners presented as many as 26 bills of entry for effecting clearances of goods for home consumption. The petitioners were claiming that the correct classification fell under Tariff Item 73. 03/.05, while it was the claim of the Department that the goods were liable to be assessed under. Tariff Item 73.15(1)(2). Ultimately, the goods were cleared on May 28, 1981 after the petitioners paid the duty as demanded by the Department. In subsequent proceedings adopted by the petitioners. It was found that the claim of the petitioners was right and the duty demanded by the Department was excessive and orders of refund were passed.

2. The petitioners sought detention certificates as according to the petitioners the goods were detained by the Department for no valid reason. The Department initially granted Detention Certificate for a period commencing from March 5, 1980 till September 6, 1980 and January 27, 1981 till May 28, 1981, but subsequently issued a fresh detention certificate superseding the earlier one and

for the period commencing from March 5, 1980 till the date of clearance of the goods under each bill of entry. The detention certificate was issued from March 5, 1980 as the investigation about the nature of the goods was taken over by the Customs Authorities on that date. In respect of all the 26 bills of entries the date of clearance by the Department.

The dispute in this petition is in respect of the period commencing from the date of lodging of the bill of entries and March 5, 1980 in respect of these 26 bills of entries, details of which are set out at Exhibit ''F'' annexed to the petition.

3. The petitioners claim that the petitioners are entitled to the detention certificate for the full period. The petitioners claim that the goods could not be cleared because of the unlawful attitude adopted by the respondents. The petitioners further claim that u/s 17(1) of the Customs Act, 1962 the Department is bound to clear the goods without under delay on lodging of the bill of entry. Shri Dhanukar, learned counsel appearing on behalf of the petitioners, submitted that the refusal of the Department to issue detention certificate from the date of lodgment of bill of entry till March 5, 1980 is without any rational are that action is required to be corrected. Prior to admission of the petition, Shri M. Velluswami, Assistant Collector, filed affidavit dated July 7, 1983, inter alia, claiming that the goods could not be cleared from the date of lodgment of bill of entries till March 5, 1980 due to the delay on the part of the petitioners in representing the bills. The return claims that the bill of entry on presentation is returned to the importer for reloading after completing the formalities and the petitioners in the present case did not represent for the considerable period. After admission of the petition, Shri S. Ramesh, Assistant Collector. Has filled return sworn on December 9, 1985, and it is reiterated that the detention certificate has been denied for the period as the delay returned to the petitioners for compliance of formalities and the assessment would be taken up only after they were presented with the formalities duty complied and to the proper section. Shri Lokur, learned counsel appearing on behalf of the respondents, urged that the practice followed by the Department is that on presentation of bill of entry the import-clerk puts his signature and returns the bill to the importer for presentation to the proper department after completion of formalities. Shri Lokur submits that after the bills Were accordingly returned back to the petitioners, they were not represented to the paper department for a considerable and the petitioners cannot take advantage of the delay on their part claim detention certificate for the period commencing from the date of lodgment of the bills till March 5, 1980. It is not possible to accept the submission of Shri Lokur, because in the first instance both the affidavits filed by Shri Velluswami and Shri Ramesh do not mention the date on which the bills were returned back and were represented. A vague averments is made that the bills were returned back to the petitioners and were represented after considerable period. It is impossible to rely on such vague averments to hold that bills were in fact returned back to the petitioners. Secondly, Shri Lokur states that the Department dose not maintain any register as to the date on which the bills were presented ad or/do not

maintain any register as to the date on which in fact returned back to the importer for compliance of formalities. Thirdly, in paragraph 7(A) of the petition the petitioners have specially claimed that all throughout the bills of entries were lying with the Customs Department and the suggestion to the contrary in the return is untrue. The petitioners after filing the bills which were in the custody of the Customs Department, but no steps were taken by the Department, to carry out the inspection till April 1980. The specific claim made by the petitioners that the bills were all along in the custody of the Customs Departments has not been denied. In these circumstances, it is difficult to accept the claim of Shri Lokur that the delay in clearance is attributable, it is default of the petitions. In my judgment, the action to the Department in refusing the detention certificate for the period commencing from presentation of the bills of entries till March 5, 1980 is not correct, expect, a rider that a reasonable period must be given to the Department to clear the goods from the date of presentation of the bills and for that period the importer would not be entitled to the detention certificate.

4. Shri Dhanuka relied upon provisions of Section 17(1) of the Customs Act, 1962 and on the decision of the Full Bench of the Madras High Court reported in 1980 Excise Law Times 178, National Industries v. Assistant Collector of Customs, Madras. Reliance on the provisions of Section 17(1) and the decision is appropriate. It is not open for the Department to unduly delay clearance of the goods, and if such delay occurs, than the importer cannot be penalised. In my judgment, the reasonable period in which the Department could have cleared the goods in the present case is three weeks from the date of presentation to the bill of entry, and accordingly the Department is bound to issue detention certificate to the petitions for a period commencing from three weeks after the date of presentation of each of the bills till March 5, 1980.

5. Accordingly, petition succeeds and the Department is directed to issue detention certificate in respect of 26 bills of entries, the details of which are set out at Exhibit ''F'' to the petition, for a period commencing from three weeks after the date of presentation of each of the bill entry and ending with March 5, 1980. The detention certificate for the requisite period in respect of each bill of entry shall be issued the Department within a period of four weeks from today.

In the circumstance of the case, will be no order as to costs.

