

(2003) 01 DEL CK 0070
In the Delhi High Court
Case No : CW No. 812 of 1978

Mount Shivalik Breweries Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 07-01-2003

Acts Referred:

Citation : (2003) 2 AD 228 : (2003) 103 DLT 78 : (2004) 72 DRJ 789 : (2003) 157 ELT 9

Hon'ble Judges : Mahmood Ali Khan, J;D.K. Jain, J

Bench : Division Bench

Advocate : V.N. Koura and Rajnish Gautam, for the Appellant; Abhinav Mukherjee, for the Respondent

Judgement

D.K. Jain, J.—The short question falling for consideration in the present writ petition is whether the petitioner is entitled to remission of Customs duty paid on the goods imported by it, after an order for clearance for home consumption had been passed but the goods were destroyed in fire before these could actually be cleared from the bonded warehouse.

2. To appreciate the rival submissions, a brief reference to the back ground facts would be necessary. These are :

The petitioner is engaged in the manufacture of beer. In August 1975, it imported through the State Trading Corporation, Ballots of Brewery Hops of Czechoslovakian origin. The said Brewery Hops, which are stated to be of extremely delicate and perishable nature, arrived at Bombay Port on 27 August 1975 and actually landed at the port for discharge on 1 September 1975. The customs examination took place on 10 September 1975 and on 17 September 1975 the goods were removed to the uncleared goods warehouse maintained by the Bombay Port Trust at Indira Dock, Bombay under the custody of the proper officer. On 23 September 1975, the petitioner paid the customs duty of Rs.1,72,533.60 levied by the Assistant Collector of Customs, Bombay on the consignment. However, before the goods could be cleared from the bonded

warehouse, a fire broke out in the uncleared goods warehouse on the morning of 24 September 1975 and the entire consignment was destroyed in the fire, along with other goods stored therein.

3. The Bombay Port Trust issued a certificate on 21 January 1976 to the effect that the said packages were destroyed in fire on 24 September 1975. The Survey Settling Syndicate, Bombay also carried out their survey of the debris on 5 March 1976 and vide their report dated 10 March 1976 opined that the entire consignment was totally and completely damaged in the fire.

4. In the meanwhile, on 19 November 1975, the petitioner applied to the Assistant Collector of Customs, Bombay for refund of the customs duty paid by it on the aforesaid consignment of Hops, totally destroyed in fire. The Assistant Collector of Customs, however, by his order dated 23 August 1976 rejected the total claim of the petitioner on the ground that Marine Survey was not carried out under the customs supervision and no action had been taken u/s 22(3) of the Customs Act, 1962 (for short 'the Act'). Feeling aggrieved, the petitioner preferred an appeal before the Appellate Collector of Customs, Bombay, but without success. The Appellate Collector was of the view that for grant of relief in duty on the consignment it was essential: (i) that the damaged goods had been brought to the notice of the Customs staff when the goods had been examined u/s 17 of the Act and (ii) that the value of the goods in the damaged condition had been determined as laid down in Section 22(3) ibid but both these requirements were not satisfied in the present case and further no damage was noticed by the Customs staff when the goods were examined on 10 September 1975. He, accordingly, held that no relief could be granted to the petitioner u/s 22 of the Act as also u/s 23(1) as there was no total physical destruction of the goods.

5. The petitioner carried the matter in revision to the Central Government but again without any success. The Revision Bench, consisting of two Joint Secretaries to the Government of India, dismissed the revision petition by holding thus:

"It is observed that the goods were examined on 10.9.75 under the first appraisalment procedure. The duty on the consignment was paid on 23.9.75 and the out of charge order was given on the same day. A fire broke out in the Port Trust premises on 24.9.75 and the goods were partially damaged and destroyed goods as laid down u/s 22 of the Customs Act, 1962 was not followed by the petitioners. As there was no total destruction of the goods, remission of duty as laid down u/s 23 of Customs Act, 1962 is also not admissible."

6. The petitioner being still aggrieved has filed the present petition.

7. In the affidavit in opposition filed on behalf of the respondents, claim of the petitioner is sought to be resisted only on the ground that on 23 September 1975, the petitioner had not only paid the customs duty but at the same time the clearance of the goods for home consumption was permitted and "out of customs charge order" was issued on the same day. It is asserted that after clearance of

the subject goods for home consumption was permitted u/s 47 of the Act and "out of customs charge" order was issued, customs were no longer concerned with the goods nor had any jurisdiction whatsoever over the goods. At this juncture, it is pertinent to note that though in the impugned orders some controversy with regard to the total or partial damage to the goods was raked up but in the reply affidavit no such plea has been taken. Therefore, in view of the reply, it is not necessary for us to go into the question whether the goods were destroyed partially or completely and its implication on the applicability of Section 23 of the Act. The controversy is, thus, narrowed down to the question whether in view of the fact that the goods were destroyed after the issue of an order for clearance of the goods for home consumption, the petitioner is entitled to the benefit of remission of the duty paid, u/s 23(1) of the Act or not.

8. We have heard Mr.V.N.Koura, learned counsel for the petitioner and Mr.Abhinav Mukherjee on behalf of the respondents.

9. Referring us to the certificate dated 21 January 1976 issued by the Bombay Port Trust Docks and report of the Marine Settling Syndicate, opining that the entire lot of Brewery Hops was completely damaged with no potential salvage left, Mr.Koura has submitted that Section 22 of the Act has no application to the facts of the case. It is asserted that since the goods had not been actually cleared for home consumption, petitioner's case squarely falls within the ambit of Section 23 of the Act. In support, reliance is placed on a decision of this Court in *The Sialkot Industrial Corporation Vs. Union of India*, 1978 Tax. L.R. 1700. In support of the proposition that the word "loss" appearing in the Section is a comprehensive term and is intended to mean and include all kinds of losses to the owner of goods, in consequence of destruction, deprivation or even depreciation, learned counsel has relied upon *The East and West Steamship Company, George Town, Madras Vs. S.K. Ramalingam Chettiar*, *Sivewright Vs. Allen*, 1906 K.B. 81 and *Chunnilal Dwarka Nath Vs. Hartford Fire Insurance*, AIR 1955 P&h 440.

10. Mr.Mukherjee, learned counsel for the respondents, while seeking to support the impugned orders, has vehemently contended that once an out of charge certificate was issued to the petitioner on 23 September 1975, the Customs authorities were left with no dominion over the goods on 24 September 1975 when the fire broke out and, Therefore, Section 23 has no application in the present case. To buttress the argument that the moment duty assessed by the proper officer on the filing of the bill of entry as per the procedure prescribed in Section 46 of the Act is paid and an order permitting clearance of the goods for home consumption is made in terms of Section 47 of the Act, the Customs are divested of the right of detention of goods and automatically the right to possession and dominion of the goods is vested in the importer, learned counsel would rely on the decision of the Karnataka High Court in *Sewing Systems Pvt. Ltd. Vs. Union of India*, and *M/s.Oswal Spinning & Weaving Mills Ltd. Vs. Collector of Customs & Anr.*, (1998) 3 SCC 310.

11. We are unable to persuade ourselves to agree with learned counsel for the respondents. Section 23 of the Act reads as follows:

"Remission of duty on lost, destroyed or abandoned goods.- (1) Where it is shown to the satisfaction of the Assistant Collector of Customs that any imported goods have been lost or destroyed at any time before clearance for home consumption, the Assistant Collector of Customs shall remit the duty on such goods.

(2) The owner of any imported goods may at any time before an order for clearance of the goods for home consumption has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon."

12. Sub-section (1), with which we are concerned herein provides for remission of duty where goods are lost or destroyed at any time "before clearance of goods" for home consumption. Unlike Sub-section (2) this Sub-section does not use the expression "before an order for clearance of goods" for home consumption has been made. Obviously, there is a distinction between "a n order for clearance for home consumption" and "clearance for home consumption", inasmuch as in our opinion, the latter expression postulates actual clearance of the goods for home consumption from the Customs custody after an order for clearance for home consumption is made.

13. It is well settled that the intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said, as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless, has to be avoided (See: MOHAMMAD ALI KHAN AND OTHERS Vs. COMMISSIONER OF WEALTH-TAX., . In Cape Brandy Syndicate v. IRC, (1921) 1 KB 64, it was said that "in a taxing statute one has to look merely at what is clearly said".

14. We are, Therefore, unable to read into Sub-Section (1) of Section 23 the expression "before an order" as the respondents would like us to do. In this view of the matter, we have no hesitation in holding that till the goods are actually delivered to the importer by the Customs from the bonded warehouse, these continue to be in the custody of the Customs, and, Therefore, till physical delivery is taken, the goods cannot be said to be cleared for home consumption, within the meaning of Sub-section (1) of Section 23 of the Act. There has to be some interregnum between the order permitting clearance for home consumption and actual clearance of the goods for home consumption by the port trust, approved custodians of the goods warehoused in their area. In our opinion, Therefore, u/s 23(1), an importer is entitled to remission of duty paid on the goods lost or destroyed at any time before physical clearance of the goods for home consumption. The only pre-requisite is that the importer has to discharge the onus that the goods have been lost or destroyed before physical clearance, which, in the instant case, has not been disputed by the respondents in the reply

affidavit filed in these proceedings. Support to this view is lent by the decision of this Court in Sialkot Industrial Corporation (supra). In that case also the goods had been assessed to duty and an order for clearance for home consumption had been made but the goods were found to be lost before these could be delivered to the importer from the warehouse. It was held that the claim of the importer for remission of duty was fully justified.

15. For the view we have taken, on the plain wording of Section 23(1), we deem it unnecessary, to deal with the requirement of filing of the bill of entry for the goods imported as per the procedure prescribed in Section 46 or the procedure prescribed u/s 47 of the Act for clearance of goods for home consumption, pressed into service by learned counsel for the respondents. Similarly, the ratio of the two decisions referred to supra, relied upon on behalf of the respondents, has no application on the issue involved in the present case.

16. In view of the foregoing discussion, the writ petition is allowed and the rule is made absolute. The respondents are directed to process forthwith the case of the petitioner for refund of the Customs duty paid by it on 23 September 1975. Since the claim for remission of duty was made a quarter century ago the refund shall be granted as early as practicable but not later than six weeks from the date of this order. There will , however, be no order as to costs.