

(1991) 11 MAD CK 0036

In the Madras High Court

Case No : Writ petition No. 12199 of 1983

Oswal Woollen Mills Ltd.

APPELLANT

Vs

The Collector of Customs and Another

RESPONDENT

Date of Decision : 11-11-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 23, 27, 30

Citation : (1996) 56 ECC 104

Hon'ble Judges : Govindasamy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Govindaswamy, J.—The petitioner imported 523.0821 metric tonnes stearin in bulk under the bill of entry No. C.126 dated 6.9.1980 through vessel M.V. BAWOON. When the consignment was lifted out of the steamer, it was traced that there was a shortage. The survey agency, namely, Lloyds Agency submitted a report, which shows that there was a shortage of 9.232 metric tonnes of stearin. Since the petitioner has already paid duty for the entire 523.0821 metric tonnes, the petitioner claimed refund of duty paid for the short delivery of stearin, i.e., for about 9.232 metric tonnes, which worked out to Rs. 19,327.40. The petitioner, by his letter No. 2260/70-A/81 dated 2.3.1981 addressed to the Assistant Collector of Customs (Refund Section), Madras-1 requesting extension of time for filing the claim for refund of duty, by reason of the fact that there was a delay in getting the Lloyds Agency's report and certificate. On 29.4.1981, the petitioner filed an application for refund of duty paid for the goods, which was short of delivery, for a sum of Rs. 19,327.40 and which represented the duty paid for the said 9.232 metric tonnes. The Assistant Collector of Customs, by his order dated 26.6.1981 rejected the claim made by the petitioner, on the ground that the petitioner had not preferred the refund claim within six months from the date of payment of duty and hence the claim was barred u/s 27 of the Customs Act. The petitioner preferred an appeal before the Appellate Collector of Customs

and the Appellate Collector of Customs also, by his order rejected the appeal on the very same ground. Aggrieved by the said order, the petitioner preferred a revision petition before the Central Government. Such revision petition was subsequently transferred to the Customs, Excise and Gold (Control) Appellate Tribunal, South Regional Branch, Madras. The Customs, Excise and Gold (Control) Appellate Tribunal, Madras, by orders dated 15th of April, 1983 in Appeal No. CD (T) (MAS) 7/82 rejected the appeal on the sole ground that the Tribunal is a creature of the statute and hence the statutory Tribunal cannot go behind the statutory provisions and he should confine to the statutory provisions and that since the refund claim was not made within the period of six months, as contemplated u/s 27 of the Customs Act, the Tribunal could not allow the appeal and consequently, rejected the appeal.

2. In these circumstances, the petitioner has filed the above writ petition for issue of a writ of mandamus directing the respondents to refund the sum of Rs. 19,527.40 collected towards duty on 9,232 metric tonnes of stearin covered by the Bill of Entry No. C-126 dated 6.9.1980 to the petitioner.

3. Mr. Habibullah Badsha, learned Senior Counsel appearing for the writ petitioner contended that in fact, it cannot be construed as refund; but it should be construed as a claim for remission based on Section 23 of the Customs Act. Section 23 provides that without prejudice to the provisions of Section 30, where it is shown to the satisfaction of the Assistant Collector of Customs that any imported goods have been lost otherwise than as a result of pilferage or destroyed at any time before clearance for home consumption the Assistant Collector can remit duty on such goods. Sub-section (2) of Section 23 provides that 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. Thereupon he shall not be liable to pay duty thereon. In the instant case, the petitioner had paid duty for the entire quantity, namely, for 523.0821 metric tonnes and since the petitioner was then not in possession of Lloyds Agency Survey Report, on receipt of the report, the petitioner submitted his claim placing the exact claim of short delivery of goods, in the circumstances of the case.

4. On consideration of the facts in question, it appears that there is merit in the contention of Mr. Habibullah Badsha, learned Senior Counsel. Even assuming that the claim is to be construed as refund claim u/s 27 of the Customs Act, the authorities concerned are not entitled to levy duty for the goods, where there is no import. Insofar as 9.232 metric tonnes of stearin is concerned, it is not and it cannot be in dispute that the goods in question were not imported. If the said 9.232 metric tonnes of stearin were not imported, the question of payment of duty does not arise. While so, any collection of duty on the said 9.232 metric tonnes, in the absence of any import, is without the authority or law and this Court, in exercising the jurisdiction under Article 226 of the Constitution, has jurisdiction to direct the authorities concerned to refund the amount so collected,

in the absence of any import of the goods in question. Since the orders of the authorities are purely based upon the fact that the plaintiff (sic) did not make his claim for refund within a period of six months from the date of payment of duty. In the instant case, the period of limitation cannot be attributed because the authorities has no jurisdiction to levy import duty for the goods, which were not imported and consequently, the collection of import duty, insofar as the goods are concerned, [was] without the authority or power and consequent impugned orders of the authorities below are liable to be quashed and they are accordingly quashed.

5. The writ petition is allowed with a direction to the authorities to refund the entire amount within six weeks from the date of receipt of the order and accordingly, the writ petition is ordered. No costs.