

(1989) 08 OHC CK 0040
In the Orissa High Court
Case No : O.J.C No. 1653 of 1981

Paradip Port Trust

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-08-1989

Acts Referred:

Customs Act, 1962 — Section 131, 18, 26, 27, 46
Limitation Act, 1963 — Section 5

Citation : (1990) 26 ECC 319

Hon'ble Judges : K.C Jagadeb Roy, J;D.P. Mohapatra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.C. Jagadeb Roy, J.—The Paradip Port Trust, the petitioner in course of his business had imported certain electric spares for their H.S.D. "Konark" which was shipped by the vessel "Indian Prestige" from Hamburg to Calcutta vide Bill of Lading No. 41 dated 4.9.1976. The vessel arrived at Calcutta on 3.11.1976.

2. The petitioner's case is that while the goods were lying in the portshed at Calcutta, a Survey was done by the General Surveyors of India on 15th, 17th and 19th of September, 1977 which reported certain damage and shortage in the said consignment After the survey, goods were brought by the petitioner's Dredger "Konark" from Calcutta to Paradip. At Paradip when the goods were taken to the Central Stores of the Petitioner it was found that there were further damages and shortages over and above the survey report of the General Surveyors of India made in Calcutta. Consequently National Insurance Company (the insurers) appointed another Surveyor, who furnished his preliminary survey report on 18.3.1978.

3. On mere invoices of the experting firm, the petitioner had paid a sum of Rs.3,27,403.18 as Customs duty vide Bill of entry No. 1141/DI dated 27.7.1977.

4. On 1.5.1978, a preliminary claim was made on behalf of the petitioner for

refund of the duty on account of the shortage and damage caused to the imported consignment. This application was received by the Assistant Controller of Customs, Calcutta on 5.5.1978 after the expiry of six months from the date of payment of the duty (i.e., 27.7.1977). The application that was made to the Assistant Collector of Customs is made Annexure-1 to the writ application which does not show under which provision of the Customs Act this application for refund was made. On perusal of this Annexure-1, it is found that the claimant asked for refund of duty for the shortage and the damage caused to the consignment. This refund of duty was made on the basis of the Survey report made at Calcutta Port and did not include the shortage and damage subsequently discovered at Paradeep. The report of survey made at Paradeep was awaited.

5. The Assistant Collector of Customs treated this application as one finding that the application for refund having been made after the expiry of six months from the date of payment of duty rejected the said application as time-barred.

6. Being aggrieved by the said order, the claimant-petitioner preferred an appeal before the Appellate Collector of Customs, Calcutta and prayed for a personal hearing, which was granted, but the petitioner did not appear on the date fixed for hearing and prayed for an adjournment. The Appellate Collector of Customs mentioned in his order that the petitioner sought adjournment on different occasions and on the last occasion, the prayer was made only by a telegram and not with a regular petition. The Appellate Collector of Customs, Calcutta ultimately rejected the prayer on the ground that the case could not be postponed indefinitely and since the only point involved was whether the application for refund of to the Assistant Collector could have been entertained having been filed after the period of limitation. The claimant admitted the petition to be time-barred and as this defect of late filing of the application could not be condoned by him he decided the case and dismissed the appeal by order dated 27.1.1979 which is made Annexure-4 to the writ application.

7. Against this appellant order the petitioner-claimant preferred a revision before the Joint Secretary to Government of India u/s 131 of the Customs Act, 1962. The order of the Joint Secretary to Government of India by order dt. 8.1.1981 as per order No. IB/81 of 1981 which is made Annexure-6 to the writ application rejected the revision petition. Though the petitioner had wanted a personal hearing and the case was fixed to 16.12.1980 for the same the petitioner did not appear on the same day and by a telegraphic message prayed for adjournment of the case to 20.12.1980. In telegraphic message the petitioner mentioned that a petition was being sent separately. Neither the petitioner did appear on 20.12.1980 nor any petition was received from the petitioner till 30.12.1980. As such the Government was left with no alternative, but to decide the case on the basis of the records available. Considering the question of limitation the Government decided that they found no reason to interfere with the order of the Appellate Collector holding the petition before the Assistant Collector as time-

barred and did not like to interfere with it. The revision, accordingly as stated was rejected. After losing the battle in all forums, the petitioner had preferred this writ application for a writ of mandamus or any other order or direction quashing Annexures 2, 4 and 6 of the writ application.

8. Section 27 of the Customs Act, 1962 provides for claim for refund of duty which reads thus:

27. Claim for refund of duty.--(1) Any person claiming refund of any duty paid by him in pursuance of an order of assessment made by an officer of Customs lower in rank than an Assistant Collector, Customs may make an application for refund of such duty to the Assistant Collector of Customs - (a) in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, before the expiry of one year,

(b) in any other case, before the expiry of six months, from the date of payment of duty;

provided that the limitation of one year or six months, as the case may be, shall not apply where any duty has been paid under protest.

Explanation.--Where any duty is paid provisionally u/s 18, the period of one year or six months, as the case may be, shall be computed from the date of adjustment of duty after the final assessment thereof.

(2) If on receipt of any such application the Assistant Collector of Customs is satisfied that the whole or any part of the duty paid by the applicant should be refunded to him, he may make an order accordingly.

(3) Where, as a result of any order passed in appeal or revisions under Act, refund of any duty becomes due to any person, the proper authority may refund the amount to such person without his having to make any claim in that behalf.

(4) Save as provided in Section 26, no claim for refund of any duty shall be entertained except in accordance with the provisions of this Section.

It is not the case of the petitioner that they come within Section 27(1)(a) and rather it was conceded before us that their case comes within Section 27(1)(b) and limitation of six months is applicable to their case for making claim for refund of duty. It is not the case of the petitioner that they had paid the duty under protest nor it was a case where the duty was paid provisionally u/s 18 of the Customs Act, 1962. Accordingly, the claim for refund of duty paid by him in pursuance of an order of assessment was required to be filed before expiry of six months from the date of payment of the duty. In the present case the duty was paid on 27.7.1977 and obviously, six months period expired much prior to 1.5.1978 when the claim for refund was made.

9. The scheme of the Customs Act, 1962 does not provide any inbuilt provision for condonation of delay in late filing of an application for refund. The Limitation

Act has also no application to the proceedings under the Customs Act, 1962. The learned Advocate for the petitioner also failed to cite any authority for the proposition that the authorities under the Customs Act can condone the delay in late filing of the application u/s 5 of the Limitation Act.

10. Further discussion on this point would be mere academic as in the present case a limitation petition was never filed along with the refund application or at any stage and no good and sufficient reasons were also shown by the writ petitioner for the delay in making claim for such refund even though the basis on which the application was being made before the Assistant Collector was known to the petitioner by the 20th September, 1977 as by then the Central Surveyor of India had surveyed the damage and shortage at the portshed in Calcutta. They waited unreasonably till 1.5.1978 and allowed the time to run against them.

11. Section 46 of the Customs Act deals with the entry of goods on importation which reads thus:

(1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting to the proper officer a bill of entry for home consumption or warehousing in the prescribed form:

Provided that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed u/s 57 without warehousing the same.

(2) ** ** *(3) ** ** ** (4) The importer while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods.

(5) ** ** ** Section 47 deals with the clearance of goods for home consumption which read as followed:

47. Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption.

12. In the present case, the petitioner had cleared his goods for home consumption and has transported the consignment by their own Dredger from Calcutta Port to Paradip after payment of the excise [Customs?] duty. u/s 46 of the Act referred to earlier the petitioner as the importer of goods, while making entry thereof by presenting to the proper officer a bill of entry for home consumption could have examined the goods in presence of an officer of

Customs as is provided under the proviso to Sub-section (1) of Section 46 of the Customs Act. Indeed, in this case as stated in the writ application by the petitioner, the goods were inspected by a Surveyor, namely, the Regional Surveyor of India and they had the knowledge about the extent of the loss due to shortage of the articles and damage caused to the consignment. Nevertheless, they had failed to make an application of refund within a period of six months from the date of payment of the duty, namely (i.e., 27.7.77). Paragraph 6 of the writ application shows, the petitioner had made the bill of entry which is numbered as 11/41. Therefore, it is not open to the petitioner to make any grievance that they had any reasonable sufficient ground of not making the application earlier.

13. This petition, therefore, has no merit and is, accordingly, dismissed. In the circumstances of the case, there shall be no order as to costs.

D.P. Mohapatra, J.

14. I agree.