(2003) 07 MAD CK 0157

In the Madras High Court

Case No : Writ Petition No. 21061 of 1994

Purfina Chemicals Private Ltd. — APPELLANT

Vs

The Customs, Excise and Gold Control Appellate Tribunal and The Collector of Customs — RESPONDENT

Date of Decision : 07-07-2003

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2003) 89 ECC 717 : (2003) 110 ECR 479 : (2004) 167 ELT 145

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : P.S. Raman, for the Appellant; N. Sampath, Addl. Central Govt. Standing Counsel for Respondent-1 and C. Russel Raj, for Respondent-2, for the Respondent

Judgement

K.P. Sivasubramaniam, J.—The writ petition, as originally filed, was for Certiorarified Mandamus call for the records relating to the order passed by the first respondent dated 25.8.1994 and to quash the same and to direct the second respondent to permit the clearance of the goods in Bill of entry No.1398 dated 19.3.1993 as "Ethyl Alcohol" under Open General Licence.

2. Subsequently, the petitioner filed WPMP Nos.16953 and 16954 of 2002, seeking amendment of the prayer as well as raising additional ground relating to the subsequent events of abandonment of goods and the consequential prayer for refund of the amounts deposited towards redemption fine and penalty.

3. In view of the subsequent events and amended prayer, it is neither necessary nor any submission has been raised on behalf of the petitioner, which would require this Court to go into the issue as to whether the impugned commodity is to be treated as "Ethyl Alcohol" as claimed by the importer or to be treated as "Consumer Goods" or "Concentrate of Alcoholic Beverage" falling under the restricted list.

4. During the pendency of the appeal filed by the petitioner, against the orders of the second respondent dated 20.9.1993, the tribunal passed orders dismissing the appeal but reducing the redemption fine from Rs.25 lakhs to Rs.12,50,000/- and penalty from Rs.2 lakhs to Rs.50,000/-.

5. Subsequently, the petitioner considering that the goods are highly evaporative in nature, moved the authorities for accepting the licence and to weigh the goods before clearance since substantial loss by evaporation would have taken place. As a precondition, the petitioner also paid the fine and penalty.

6. However, the second respondent refused to weigh the goods for any remission of duty as contemplated u/s 22 and 23 of the Customs Act. Therefore he filed W.P.No.7062 of 1995, seeking for Mandamus to grant weighment and the said writ petition was allowed, directing the respondents to consider the request of the petitioner for remission due to loss in the quantity of goods. In the order dated 30.3.1999, the respondents passed granting remission of duty u/s 23. As the petitioner''s buyers were no longer interested in the cargo, and considering the condition of the cargo due to long passage of time, by letter dated 14.5.1999, the petitioner sought for abandoning the goods and the goods were duly abandoned.

7. Mr.P.S.Raman, learned counsel for the petitioner represents that in view of the above said facts, the petitioner is not interested in canvassing the rate of duty payable to the goods and considering that the goods have been abandoned, the petitioner would be satisfied to get back the amount paid by him towards redemption fine.

8. Learned counsel refers to Section 125 of the Customs Act, which deals with imposition of redemption fine. Learned counsel contends that such fine is contemplated only to avoid confiscation and considering that the goods have been abandoned, the petitioner is entitled to refund of the redemption fine.

9. I have considered the submissions of the learned counsel for the petitioner. To appreciate his submissions, it is necessary to extract Section 125 of the Customs Act, which is as follows:-

"125. Option to pay fine in lieu of confiscation--(1) Whenever confiscation of any goods is authorised by this Act, the Officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods (or, where such owner is not known, the person from whose possession or custody such goods have been seized,) an option to pay in lieu of confiscation such fine as the said Officer thinks fit:

Provided that, without prejudice to the provisions of the proviso to sub-section (2) of Section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) where any fine in lieu of confiscation of goods is imposed under sub-section

(1) the owner of such goods or the person referred to in sub-section (1) shall, in addition, be liable to any duty and charges payable in respect of such goods".

10. A perusal of the above provision discloses that the fine under the said provision becomes leviable only in lieu of confiscation. It is an option given to the importer either to allow the goods to be confiscated or to pay the fine in lieu of confiscation.

11. Having regard to the aforesaid facts which are not controverted by the second respondent, by filing a representation before the second respondent, the petitioner had sought for abandonment of goods and subsequently, the same was abandoned. Therefore there being no scope for payment of any fine in lieu of confiscation, the petitioner will be entitled to the refund of the amount paid by him towards redemption fine.

12. With the result, there will be a direction the respondents to refund the redemption fine paid by the petitioner. It is made clear that whatever penalty amount has been awarded against the petitioner, the same shall be sustained and the petitioner will not be entitled for any refund of the said fine amount.

13. The writ petition is ordered subject to the above observations. No costs.