(1987) 03 CAL CK 0031

In the Calcutta High Court

Case No : Matter No. 496 of 1987

Radheshyam Tulsian APPELLANT

Vs

Collector of Customs and Others RESPONDENT

Date of Decision : 06-03-1987

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 22(1)

Citation : (1988) 19 ECR 218 : (1987) 31 ELT 58

Hon'ble Judges : Ajit Kumar Sengupta, J

Bench : Single Bench

Advocate : None, for the Appellant;N.C. Roy Chowdhury, for the Respondent

Final Decision : Allowed

Judgement

Ajit Kumar Sengupta, J.—In this application under Article 226 of the Constitution the petitioner has asked for a mandamus directing the respondents to pay a sum of Rs. 2,21,910.30p with interest (9 18% per annum on compound basis. The facts leading to this application are stated hereinafter.

2. The petitioner carries on business of import under the name and style of Calcutta Hardware Stores.

3. The petitioner imported 36 coils of stainless steel sheet in 1980. In respect of the said consignment the bill of entry for home consumption was submitted and the custom duty was paid on 5th November, 1980 when the said goods were with the Customs Authorities in the Dock. The petitioner applied for examination of the goods by the Customs Authorities for determining the damaged or deterioration in the said goods.

4. On 7th November, 1980 the said goods were examined by the Examining Officer, the said Appraiser and Assistant Collector of Customs (Dock) for the purpose of ascertaining the extent of damage to the goods. It was found that the said goods were actually damaged and damage was quantified to the extent of

3096. The said goods were also examined by the Insurance Surveyor and the report of the Surveyor showed that the said goods had been damaged and deteriorated in quality due to rough and careless handling and/or bad storing during voyage.

5. The Assistant Collector of Customs (Dock) also submitted a report in which he said -

"The damage/deterioration is estimated to the extent of 30% on the 28 coils. The remaining 8 coils are found to be in sound condition".

In view of the aforesaid damage caused to the coils the petitioner became entitled to abatement of duty u/s 22(1)(a) of the Customs Act, 1962 and applied for refund of duty. The Assistant Collector of Customs, Appraising Refund Section dismissed the petitioner''s application for refund of duty on 23rd June 1982 on the plea that it had not been established that the said goods have been damaged and/or deteriorated at any time before or during unloading of the goods in India.

6. Being aggrieved by the said order the petitioner preferred an appeal before the Collector (Appeals). After hearing the parties and considering the records the Collector (Appeals) allowed the appeal filed by the petitioner and set aside the order of the Assistant Collector of Customs.

7. Against the said order of the Collector (Appeals) dated 4th June, 1983 the Collector of Customs moved an application to the Customs, Excise & Gold (Control), Appellate Tribunal. The petitioner contended before the Tribunal that the said appeal was barred by limitation. The Tribunal was of the view that'' the appeal was barred by limitation and no sufficient cause was shown for condonation of delay. Accordingly the application for condonation of delay as well as the appeal were dismissed by the Tribunal on 18th July, 1985.

8. The Customs Authorities thereafter filed another application before the Tribunal for review on the plea that there had been some mistakes on their part. The matter was considered by the Tribunal and by another order dated 21st February, 1986 the Tribunal rejected the said application on the ground that the Tribunal having passed an order upon consideration of the facts and circumstances of this case it was no longer open to the Tribunal to review or revise its order.

9. The respondents thereafter moved a reference application before the Tribunal praying for a reference on a point of law to the High Court. The Tribunal rejected the reference application by the order dated 10th April 1986. thereafter no further proceedings were initiated.

10. The learned Counsel appearing for the petitioner contended that the claim of the refund is based on the abatement which the petitioner is entitled to having regard to the order of the Collector (Appeals). It is also contended that the petitioner is entitled not only to the refund of Rs. 2,21,910.30p. but interest as well on the said amount. It is contended that after the order was passed by the

Collector (Appeals) on 4th June, 1983 the respondents did not have any jurisdiction to withhold the refund although further proceedings might have been taken by them.

11. Mr. N.C. Roychowdhury, learned Counsel appearing for the respondents has not disputed the fact narrated in this application. It is his contention that the department will refund the sum of Rs. 2,21,910.30p. within such time as the Court may direct but the Court should not allow any interest on the facts and circumstances of this case.

12. I have considered the rival contentions. It appears that the Collector (Appeals) accepted the contention of the petitioner and allowed the appeal of the petitioner on 4th June, 1983. In other words in view of the order of the Collector (Appeals) the petitioner became entitled to the refund.

13. Although the Collector of Customs preferred appeal before the Tribunal but no order of stay was obtained nor was any application filed for such stay. Ultimately the application for condonation of delay, the appeal, the application for review and the reference application had been dismissed one after another by the Tribunal. The matter was not proceeded further. Even after the order was passed by the Tribunal rejecting the application for reference on 10th April, 1986 the respondents did not issue the refund order to the petitioner. It is surprising that the respondents without there being any ground for withholding the refund deprived the petitioner of the use and enjoyment of the said sum of Rs. 2,21,910.30p. since 4th June, 1983 when the order of the Appellate Authority was made.

14. In the case of Dilichand Shreelal Vs. Collector of Central Excise and Others, I held that the interest is the return or compensation for the use or retention of another''s money. Since the respondents had retained and enjoyed the benefit of such money they were bound to pay interest. In that case the collection of the duty was held to be unauthorised. The refund was directed to be issued along with interest @ 12% per annum from the date of collection till the date of actual payment. In this case the collection initially was not unauthorised because there was no examination of the goods. The bill of entry was processed and the petitioner paid the duty on 15th November, 1980. The right to claim refund accrued to the petitioner only after the goods have been examined and found damaged. The petitioner thereafter made the application for refund which was rejected by the Assistant Collector. The Collector (Appeals) by his order dated 4th June, 1983 allowed the claim for refund. The petitioner, therefore, was entitled to the refund on 4th June, 1983. There is no reasonable excuse for withholding the refund from that date and accordingly it must be held that withholding of the refund was unauthorised and illegal. Since the respondents enjoyed the benefit of the said sum of Rs. 2,21,910.30p. they are under an obligation to pay interest to the petitioner.

15. Having regard to the facts and circumstances of this case this application is

allowed with a direction upon the respondents to pay the sum of Rs. 2,21,910.30p. with simple interest @ 12% per annum from 4th June, 1983 till the date of payment. The respondents shall pay the said sum with interest in terms of the order to the petitioner within two weeks from the date of communication of this order.

16. Let the certified copy of the judgment be made available within three days after the judgment is signed.

