(1991) 07 BOM CK 0015

In the Bombay High Court

Case No : Writ Petition No. 2268 of 1983

Raymond Woollen Mills Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 29-07-1991

Acts Referred:
Customs Act, 1962 — Section 2(14), 27, 27(1)

Citation : (1992) 40 ECR 168 : (1991) 55 ELT 483

Hon'ble Judges : M.L. Pendse, J;A.V. Savant, J

Bench : Division Bench

Advocate : Shri P.N. Vora, for the Appellant; Shri V.G. Rege, for the Respondent

Judgement

Pendse, J.—By this petition filed under Article 226 of the Constitution of India, the petitioners are challenging decision recorded by CEGAT confirming the order passed by the appellate authority and Assistant Collector rejecting the refund claim on the ground that the claim is barred by provisions of Section 27 of the Customs Act. The facts lies in a narrow compass and are required to be briefly stated to appreciate the grievance of the petitioners.

2. The petitioners imported liquid paraffin by two separate consignments in March, 1977. The petitioners presented bill of entry and paid customs duty under Tariff Item 27.10(1) at the rate of 40% and auxiliary duty at the rate of 5%. The petitioners claimed that the collection of countervailing duty by the Customs authorities was not justified under Excise Tariff Item No. 11A. The Department did not accept the claim and as the petitioners were keen to clear the goods, the countervailing duty/additional duty at the rate of 20% ad valorem and Rs. 190/- per metric ton was paid by the petitioners. The petitioner thereafter filed two separate refund applications on February 1, 1979 and claimed refund of sum of Rs. 1,08,242.60 in respect of the two consignments.

The Assistant Collector of Customs (Refund) rejected the claim by order dated February 5, 1979 on the ground that refund claim was not received within six months from the date of payment of duty and accordingly the claim was carry u/s 27(1) of the Customs Act. The decision recorded by the Assistant Collector was confirmed in two separate appeals preferred before the Appellate Collector of Customs. The Appellate Collector concurred with the view taken by the Assistant Collector. The decision of the Appellate Authority was challenged by the petitioners by filing two revision applications before the Ministry of Finance, Department of Revenue, New Delhi. The revisions were transferred after constitution of CEGAT and the revision applications were rejected by order, copy of which is annexed as Exhibit ''J'' to the petition. These orders are under challenge in this petition filed under Article 226 of the Constitution of India.

3. Shri Vora, learned counsel for the petitioners, submitted that the three authorities below were in error in rejecting the refund claim on the ground that the claim was barred by provisions of sub-section (1) of Section 27 of the Customs Act. The submission is correct and deserves acceptance. It is now well settled by catena of decisions of this Court that the limit prescribed u/s 27 is not available as a defence in the proceedings filled in this Court under Article 226 of the Constitution of India. Though the authorities constituted under the Customs Act are bound by the provisions of Section 27, the defence is not available to the Department when in writ jurisdiction it is established that the recovery of duty was in violation of law. It is now well established that the Department cannot retain duty which was recovered without any authority of law.

Shri Rege, learned counsel appearing on behalf of the Department, submitted that there is nothing on record to establish that duty was recovered without any authority of law. The learned counsel invited our attention to the observations made by CEGAT to the following effect :

"From the grounds of revision, it is not possible to make out how the collection was without authority of law or payment made under mistake of law. In the grounds beyond stating that Liquid Paraffin Light could not be considered as suitable goods as defined u/s 2(14) of the Customs Act, 1962, nothing more has been said."

Shri Rege submitted that there is no decision holding that levy and recovery of countervailing duty was without any authority of law. The submission cannot be accepted for more than one reason. In the first instance in the revision application filed by the petitioners and heard by CEGAT it was specifically mentioned that on receipt of clarification from enquiries made with various technical authorities and Government Institute of Technology it was realised that Liquid Paraffin is manufactured from the base lubricating oil fraction and is not a product derived from the refining of crude petroleum or shale, which alone is excisable under Item 11A of the Central Excise Tariff. Ground (c) of the revision petition reads as under :

"(c) On receipt of this clarification and after clearance of a similar consignment without the levy of countervailing duty, claim for refund in the present case was made."

The counsel for the petitioners therefore submitted that it was brought to the attention of the Revisional authority that the consignments of identical nature were subsequently cleared by the Customs Department without demanding countervailing duty. In addition to the claim made in the revision application, the counsel invited our attention to specific averments made in the petition to that effect. The Department has not cared to file return inspite of pendency of this petition for last over eight years and have not chosen to controvert the claim made by the petitioners. Secondly, the counsel for the petitioner pointed out that CEGAT has recorded several decisions holding that import of Liquid Paraffin does not attract countervailing duty under Item 11A of the Central Excise Tariff. The CEGAT recorded its decision by relying upon the decision of the Gujarat High Court. It is therefore obvious that the three authorities were fully conscious that levy of countervailing duty was without any authority of law and therefore proceeded to reject the the revision application only on the ground of limitation. Ground of limitation cannot survive and the petitioners are consequently entitled to the refund claimed.

4. Accordingly, petition succeeds and the rule is made absolute in terms of prayer (b). The respondents are directed to grant refund after verification within period of six weeks from today. In case the amount is not refunded within six weeks, then the Department shall pay interest at the rate of 15% per annum on the said amount of refund from today till the date of the payment.

5. There will be no order as to costs.