
(1986) 07 BOM CK 0034

In the Bombay High Court

Case No : Writ Petition No. 1866 of 1982

Ruby Mills and another

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 31-07-1986

Acts Referred:

Customs Act, 1962 — Section 128, 27

Citation : (1986) 10 ECC 202 : (1988) 15 ECR 336 : (1986) 25 ELT 610

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

1. By this petition filled under Article 226 of the Constitution of India, the petitioners are challenging the legality of the order dated May 27, 1982 passed by the Assistant Collector of Customs, Air Cargo Complex, Bombay, rejecting the application of refund of duty paid by the petitioners. The facts giving rise to the passing of this order are as follows.

2. The petitioners imported Lucop Step and Repeat Machine and the Bill of Entry was filed on November 29, 1980. The Customs authorities assessed the goods as falling under Tariff Item No. 90.10 as stated by the petitioners and the duty was recovered. Subsequently, the petitioners become aware in June 1981 that the Collector of Customs (Appeals) has decided a matter on March 28, 1981 holding that the machine, viz. Lucop Step and Repeat Machine, is liable to be assessed under Tariff Item No. 84.35. The duty payable under tariff Item No. 90.10 was 100%, while under Tariff Item No. 84.35 was 40%. The petitioners realized, after becoming aware of the judgment delivered by the Collector of Customs (Appeal), that excessive duty was paid by them on November 29, 1980.

3. The petitioner thereupon preferred refund application before the Assistant Collector of Customs on July 1, 1981. The refund was sought for an amount of Rs. 2,67,724.23. The application for refund was rejected by the Assistant Collector holding that it was barred by limitation as prescribed u/s 27 of the Customs Act. On merits, the Assistant Collector merely observed that the

assessment order holding that the machine was liable to duty under tariff Item No. 90.10 was correct and this order of the Assistant Collector is under challenge.

4. Shri Bharucha, learned counsel appearing on behalf of the petitioners, submitted that the order refusing refund is entirely erroneous. The learned counsel submitted that it is now well-settled that when duty is paid by the assessee under mistake of law and recovered by the authority in contravention of law, then for seeking refund of such duty, it is necessary for the assessee to adopt proceedings within three years from the date of knowledge of the mistake of law. Shri Bharucha submitted that the Collector was not right in holding that the application was barred under the provisions of Section 27 of the Customs Act. It is really not necessary to determine whether the Collector was bound by the provisions of Section 27 of the Customs Act because it can hardly be debated that excessive duty was paid by the petitioner under mistake of law, and it is now well-settled that such duty cannot be retained by the Department. Shri Rege, learned counsel appearing on behalf of the Department, strenuously urged that the petitioners had remedy to file an appeal against the assessment of duty under Tariff Item No. 90.10 and if the petitioners did not adopt that remedy, the order had become final and refund cannot be granted. The submission is misconceived because the refund is sought on the ground that excess duty is recovered by the Department under mistake of law.

Shri Rege then submitted that the order passed by the Assistant Collector holding that the machine was liable to duty under Tariff Item No. 90.10 was correct. It is impossible to accede to this submission. The Collector of Customs (Appeals) came to the conclusion, in respect of import of identical machine by some other importer, that the machine was liable to be assessed under Tariff Item No. 84.35. The decision of the Collector of Customs (Appeals) has become final and it is binding on every subordinate authority. The Assistant Collector, while refusing the refund, has not even bothered to deal with the order passed by the Collector of Customs (Appeals). In my judgment, the Assistant Collector was clearly in error in rejecting the application of the petitioners.

5. Accordingly, petition succeeds and the order passed by the Assistant Collector rejecting the refund application is set aside and the Assistant Collector is directed to ascertain how much excess duty was recovered in respect of import of Lucop Step and Repeat Machine by the petitioners and refund such excess duty to the petitioners within a period of three months from today. In the circumstances of the case, there will be no order as to costs.