(2011) 03 DEL CK 0467

In the Delhi High Court

Case No : Writ Petition (Civil) No. 3936 of 1994

Sawhney Brothers APPELLANT

Vs

Collector of Customs RESPONDENT

Date of Decision : 07-03-2011

Acts Referred:
Customs Act, 1962 — Section 27

Citation : (2011) 23 STR 442 : (2011) 33 STT 343

Hon'ble Judges : Dipak Misra, C.J;Sanjiv Khanna, J

Bench : Division Bench

Advocate : Gajendra, for the Appellant; Ashwani Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—The Petitioner M/s Sawhney Bros., a partnership firm had imported Hooks, Loops and Adhesive Tapes from Taiwan in the year 1988. Issues arose regarding the value declared and Additional Collector of Customs enhanced the values, raised a demand and ordered for confiscation of the above goods giving option to redeem the goods on payment of redemption fine.

2. Appeals preferred by the Petitioner before the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT, for short) were decided vide order dated 13th March, 1992. It was directed that the value declared by the Petitioner should be accepted. Dispute about the classification of the goods was not decided. This issue was not raised by the Petitioner at the time of show cause notice or during the adjudicating proceedings before the authorities. In the final paragraph of the order dated 13th March, 1992, it was directed that the refund requisition for grant of interest @ 18% on the refund amount, if any, could not be considered by the CEGAT as there was no such provision in the statute and the CEGAT cannot grant any such relief being a creature of the statute itself. This order is not subject matter of challenge in the present writ petition. The said order and the directions given therein have attained finality. In fact the Petitioner has prayed for issue of writ of mandamus directing the Respondent-Customs

authorities to implement the order of CEGAT dated 13th March, 1992 and direct refund of the amount claimed by the Petitioner with interest @ 18% p.a.

3. We do not find that the CEGAT had issued any direction for payment of interest. This prayer was specifically rejected. In terms of the order dated 13th March, 1992, the Petitioner is not entitled to interest.

4. The Petitioner had filed another application before the CEGAT that the authorities were not granting consequential effect to the earlier order dated 13th March, 1992. The Tribunal in its order dated 20th April, 1993, reprimanded the authorities for not implementing the order passed and directions were given to comply with the order dated 13th March, 1992 by 30th May, 1993. The request for grant of interest was again rejected.

5. Thereafter show cause notice dated 15th February, 1994 was issued to the Petitioner. In the show cause notice it was stated that in view of Section 27 of the Customs Act, 1962 (Act, for short), refund can be given to the Petitioner if it proves that the incidence of extra duty paid had not been passed on to the consumers/purchasers. The Petitioner was asked to satisfy with supporting documents their contention that the refund of extra duty would not result in unjust enrichment. It may be noted that the Petitioner before the Deputy Collector of Customs had stated that the refund amount could be issued in favour of Sant Welfare Trust instead of the Petitioner.

6. The Petitioner thereafter filed an application before the CEGAT which was disposed of vide order dated 7th June, 1994. The said order records that the authorities had stated that the Assistant Collector of Customs vide order dated 2nd May, 1994 had inter alia rejected the claim of refund on the ground of unjust enrichment under the amended Section 27 of the said Act. This order dated 2nd May, 1994 is impugned in the writ petition. The CEGAT disposed of the application vide order dated 7th June, 1994, inter alia observing that their earlier order dated 13th March, 1992 had been complied with and, therefore, no further directions were required to be issued as the claim of the Petitioner was rejected on the ground of unjust enrichment. It was further directed that the Petitioner could challenge the said order before the appropriate forum or otherwise in accordance with law.

7. We do not find any reason to interfere with the said order dated 7th June, 1994 and the order dated 2nd May, 1994. As noticed above, the order dated 13th March, 1992, no specific order or direction for refund was made. The claim for interest was specifically rejected and direction was issued for refund, if any, would be paid. Use of the word ''if any'' indicates that if payable as per law, refund should be made to the Petitioner. Refund was to be paid in accordance with the provision of the Act. The Petitioner could not produce relevant documents to show that they had not passed the incidence of duty to the customers/consumers. The order dated 2nd June, 1994 passed by the Assistant Collector of Customs, records that repeated opportunities were granted to the

Petitioner to furnish proof to the effect that the burden/element of duty was not been passed to the customers/consumers, but no documents were produced to substantiate the case. On several dates the Petitioner had not appeared inspite of opportunity granted. As noted above, the Petitioner wanted to donate the amount to a Charitable/ Welfare Trust. Accordingly, the claim of refund of Rs. 1,54,230/- and Rs. 42,783/- was rejected with the following observations and reasoning:

I have carefully gone through the records of the case, I have found that despite of giving several reminders and opportunities of personal hearing from time to time and even on issuing of S.C.N. the party have failed to produce authentic documentary proof in respect of un-due enrichment. Under the provisions of Customs and Central Excise (Amendment) Act 1991 (40 & 91) it is clearly mentioned that in case "the claimant" has not borne the incidence of duty, but the amount of refund is admissible, the same shall be credited to the consumer welfare fund". Since the party have failed to submit the proof that the amount held by Hon''ble CEGAT to have been paid in excess, has been passed, on to the customers and that this refund will in no way was unjust enrichment to them, therefore it has been decided that the refund amount due to the party may be credited to the consumer-welfare fund.

8. The aforesaid order is in accordance with law. We do not see any ground to interfere in the said order. The Petitioner has not challenged the applicability of Section 27 of the Act. Accordingly, the writ petition is dismissed with no orders as to costs.