(1987) 07 BOM CK 0023

In the Bombay High Court

Case No : Writ Petition No. 274 of 1982

Scorts Tractors Ltd. APPELLANT

Vs

Union of India and others RESPONDENT

Date of Decision : 16-07-1987

Acts Referred:

Customs Act, 1962 — Section 27

Citation : (1988) 15 ECC 320 : (1987) 31 ELT 685

Hon'ble Judges : H. Suresh, J

Bench : Single Bench

Judgement

1. The petitioners imported Cold Rolled Steel Sheets from the Federal Republic of Germany on the vessel known as M. V. Azuma for carriage from Hamburg to Bombay, under the Bill of Lading dated May 31, 1980. The suppliers submitted invoice dated May 2, 1980 for the said sheets which comprised 41 bundles. The vessel arrived in Bombay on or about July 19, 1980. The Import General Manifest was filed on or about the same day and 41 bundles meant for the petitioners were listed in the said import General Manifest. The petitioners through their clearing agents filed a Bill of Entry for Home consumption in respect of the said 41 bundles imported by them, and paid duty aggregating to Rs. 1,69,298.85.

2. After the said duty was paid it was discovered that 36 bundles out of the 41 bundles were short landed and appeared to have been over carried on the vessel to Madras. Thereafter the said 36 bundles were brought back to Bombay on the vessel known as S. S. Arthraveda and the vessel arrived in Bombay on October 17, 1980. The respondents would not give clearance for the said 36 bundles except upon payment of duty. There was no obligation for the petitioner to pay such duty inasmuch as they had already paid for the full 41 bundles earlier. However, the respondents would not agree and, therefore, on October 30, 1980 the petitioners paid a sum of Rs. 1,44,545.45 and thereafter the goods were cleared.

3. The petitioners thereafter made an application for refund of the duty paid on

the said 36 bundles, on or about January 23, 1981. Clearly, the department had no justification whatsoever to levy duty for the second time on the same item. However, the Assistant Collector rejected the claim by an order dated March 2/3, 1981 on the ground that the claim was time barred. The appeal preferred by the clearing agents was also rejected by the appellate Collector on July 8, 1981. In these circumstances the petitioners had to file the present petition.

4. It appears that the department had gone on the footing that the duty for refund of the amount should be calculated on the basis of the earlier payment made on July 23, 1980 when the duty was paid for the full 41 bundles. This is somewhat strange. The only question before the Assistant Collector was as to whether, in law, the department could have demanded duty for the second time. It is the duty that was paid for the second time which has to be refunded inasmuch as the said duty was recovered without the authority of law. If that is so, the application made in January 1981 was clearly within time and, therefore, the Assistant Collector, as also the appellate authority, could not have passed the impugned orders.

5. Even otherwise, since it is clear that there is no second import of these bundles, the department could never have demanded the duty once again. Such a collection of duty is without the authority of law and obviously there can be no question of limitation in such cases. Mr. Vahanvati has drawn my attention to a judgment delivered by Mr. Justice Bharucha dated November 5, 1984 in writ petition No. 496 of 1981 Gujarat Water Resources Development Corporation Ltd. v. Union of India and others, wherein the learned Judge has clearly stated, in similar circumstances, that there was no justification for refusal of the customs authorities to permit the petitioners to clear 17 cases (which had been over carried and brought back to Bombay) without payment of customs duty anew. There, of course, the petitioners had come to the Court, before the duty was paid. In the present case, the petitioners felt that they had no choice but to pay the duty and clear the goods.

6. In the result I pass the following Order :

Rule is made absolute in terms of prayers (a) and (b). However the interest shall be paid at the rate of 15% per annum from the date of collection till refund, by the respondents.

7. In the circumstances of the case, there will be no order as to costs.

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