(1987) 06 BOM CK 0010

In the Bombay High Court

Case No : Misc. Petition No. 1474 of 1979

Slm Maneklal Industries Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 11-06-1987

Acts Referred:
Customs Act, 1962 — Section 13, 23, 27

Citation : (1988) 15 ECC 336 : (1988) 36 ELT 545

Hon'ble Judges : H. Suresh, J

Bench : Single Bench

Judgement

1. The petitioners imported certain materials. It appears that the ship bringing these materials arrived on 10th February 1975. The consignment was unloaded on 21st February 1975. On 3rd April 1975, the petitioners paid the Customs duty on the entire consignment.

2. The said consignment consisted of three cases of various components. After they paid the duty on the same day i.e. on 3rd April, 1975 the Clearing Agents of the petitioners suspected that one of the cases was damaged and some of the contents of the said cases appeared to be missing. They, therefore, requested the Insurance Agents to arrange for a preliminary survey of the said consignment. The Surveyors carried out the survey. But it is an admitted position that at that time no officers of the Customs Department was present. The report of the survey carried out on 4th April, 1975 is at Exhibit ''A'' to the petition. The report says that the Clearing Agents'' representative requested the Surveyors to carry out the survey only in respect of the outward condition of the cases and on examination they found the side planks broken and partly missing, and three cartons were found empty. Thereafter the consignment was transported to the petitioners'' factory at Vatva, in Ahmednagar District, by lorry. A detailed survey was done at Vatva on 12th May 1975. There is a report in respect of the survey carried out at Vatva, which is dated 3rd July, 1975, and which is at Exhibit ''B'' to the petition. That report clearly confirmed that certain packages were missing. It

appears that thereafter the petitioners claimed their does from the Insurance Company on the basis of this loss. They have also thereafter, applied to the Government for a further import licence to import the goods in replacement of the lost goods, which the Government has granted. The petitioners then made an application u/s 27 of the Customs Act, 1962 for refund of the duty paid in respect of the goods which were found missing on 30th September 1975. This application was rejected throughout. The final order is dated 14th July 1978, being Exhibit ''J'' to the petition. That order sets out the facts in detail, as stated above. The order shows that on 4th April 1975 when some shortages were detected by the surveyors, the Customs Officer was still available in the docks, but he was not requested to examine the cases, and the petitioners had no explanation, excepting that the same was due to the fault on the part of the Clearing Agents. The survey carried out at Vatva on 12th May 1975 is of no consequence. It was in fact, argued before the Government that the petitioners should obtain the refund in equity at least. The Government did not consider the said submission.

3. Mr. C. M. Korde appearing for the petitioners submitted that it is clear that on 4th April 1975 there was shortage and that was before the goods were cleared from the docks for home consumption and, therefore, the claim of the petitioners could have been considered u/s 13 read with Section 23 of the Customs Act.

4. I am afraid, that position is not accepted by the respondents. Whether, in fact, there was a shortage on 3rd April 1975 or 4th April 1975, is a question of fact and there is no agreement in that behalf on the part of Government. If that is so, that being a question of fact, this Court cannot entertain a writ petitioner in such circumstances. Even otherwise the case fairly appears to be on equity, and in matters of equity, if having regard to all the circumstances, the Government exercises, its discretion one way or the other, inasmuch as there are special circumstances, a writ court will not interfere. The petitioners must squarely accept this as an item of wear and tear in their business. Hence this petitioners must be rejected. I, therefore, pass the following order.

ORDER

Petition rejected. However, there will be no order as to costs.