(1992) 11 CAL CK 0008

In the Calcutta High Court

Case No : Matter No. 3841 of 1992

Super Cassettes Industries Ltd. APPELLANT

Vs

Collector of Customs RESPONDENT

Date of Decision : 24-11-1992

Acts Referred:
Customs Act, 1962 — Section 129E, 27, 27(2)

Citation : (1993) 66 ELT 557

Hon'ble Judges : Suhas Chandra Sen, J

Bench : Single Bench

Advocate : Shayamal Sarkar and Bidyut Dutta, for the Appellant;None, for the Respondent

Judgement

Suhas Chandra Sen, J.—This application has been made for refund of money deposited by the petitioner u/s 129E of the Customs Act, 1962. The dispute is as to the dutiability of two sets of Automatic Compression Reverters with quick return mechanism. The machines are used for manufacturing audio cassettes. The petitioner is engaged in the business of manufacturing cassettes popularly known in the market as T-Series Audio Cassettes''. The petitioner claims that the machinery imported by the petitioner falls under Tariff Heading No. 84:44.48. The contention of the Customs Department was that the cassettes were classifiable under Tariff Item No. 81.59. The petitioner went up on appeal against the aforesaid order dated October 15, 1984 passed by the Collector of Customs, Calcutta. The Appellate Tribunal ultimately held that there was no justification for classifying the goods in question under Item 84.58.

2. As a pre-condition for filing the appeal, the petitioner had made a deposit of the disputed amounts under the provisions of Section 129E of the Customs Act, 1962. The petitioner now claims for refund of the said amount and also the amount of penalty deposited by it. The total amount deposited by the petitioner was Rs. 2,34, 802.21. Pursuant to the Order of the Tribunal the petitioner claims an amount of Rs. 1,20,157.39 has become refundable to the petitioner. The

respondents, however, have not refunded the said amount. The contention of the petitioner is that the amount of money claimed must be refunded to the petitioner. There is no contradiction to any of the allegations of facts made out on the petition by the respondents. Moreover, the case of the petitioner is that the petitioner has fulfilled the conditions laid down in proviso to Sub-section (2) of Section 27 of the Customs Act and, therefore, there is no reason why the amount should not be refunded to the petitioner. The case of the petitioner is that the petitioner purchased the two machines for its own use and has not passed on the incidence of duty paid to the consumers. The reverters were imported for manufacturing audio cassettes and were not meant to be re-sold and there was no question of passing of incidence of duty on any other person.

3. In my judgment the contention of the petitioner must be upheld.

4. That apart, in my view, there is no question of invoking the proviso to Section 27 of the Customs Act in a case where the amount demanded by the respondents have been secured by the petitioner under the provisions of Section 129E. The security may be in the shape of deposit with the ''proper officer''.

5. Such deposit should not be treated as payment of duty. The Section itself speaks of the payment as "deposit with proper officer". Therefore, provisions of Section 27 cannot stand in the way of refund of deposit made by the petitioner for preferring an appeal to CEGAT. Section 27 applies only to the case of persons who are claiming refund of any duty paid in pursuance to an order of assessment or any duty borne by that person. But when an amount equivalent to duty is deposited with ''proper officer'' for the purpose of preferring an appeal, such deposit cannot be treated as duty paid by the petitioner in pursuance to an assessment order. The amount deposited remained merely as deposit till the disposal of the appeal by the Tribunal. Now the petitioner has succeeded in the appeal. The petitioner is entitled to obtain refund of the amount deposited.

6. Nobody has appeared to oppose this application on behalf of the customs authority.

7. In view of the above the writ petition succeeds. There will be an order, as prayed, in terms of prayers (b) and (c) of the petition.

The writ petition is finally disposed of, as above.