
(2010) 03 KAR CK 0085
In the Karnataka High Court
Case No : CSTA No. 26 of 2006

The Commissioner of Customs

APPELLANT

Vs

PSI Data Systems Limited

RESPONDENT

Date of Decision : 18-03-2010

Acts Referred:

Customs Act, 1962 — Section 23 (2), 59 (1), 61 (1) (b), 68

Citation : (2010) 255 ELT 55

Hon'ble Judges : K.L. Manjunath, J;H.S. Kempanna, J

Bench : Division Bench

Advocate : Shashikantha, for the Appellant; G. Shivadass, Suresh Astekar and Anil Kumar, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—The Revenue has come up in this appeal following the order of the CESTAT in final Order No. 2198/2005 dated 9.12.2005. The appeal is admitted to consider the following substantial questions of law:

(i) Whether the CESTAT is legally right In giving relief to the Respondent under the amended Section 68 of the Customs Act, 1962, which came into operation only from 14.05.2003, when the transaction in question had taken place much earlier to the date of commencement of the said amended Section?

(ii) Whether the CESTAT is legally right in granting relief to the Respondent under amended Section 68, when in the earlier round of litigation the Hon"ble High Court of Karnataka has refused to give such a relief u/s 23(2) of the Customs Act, 1962?

(iii) Whether the CESTAT is legally right in quashing the Duty, the interest and penalty, while giving relief to the Respondent under amended Section 68 of the Customs Act, 1962, when the proviso to the said Section clearly prescribes that owner of any Warehoused Goods may relinquish his title to the goods upon payment of rent, interest, other charges and penalties that may be payable in

respect of the Goods?

2. The assessee has imported memory chips vide Yellow Bill dated 22.3.1989. The goods were deposited at Central Warehousing Corporation, K.R. puram on 16.6.1999 under bond No. 55/1989 in terms of Section 59(1) of the Customs Act, 1962 (for short "the Act") by executing necessary bonds. Within the time stipulated for removal of bonded goods, the respondent-assessee did not remove the goods from the warehouse. The time stipulated came to an end on 15.6.1990. Accordingly, the appellant-Revenue in terms of Section 61(1)(b) of the Customs Act treated the goods as "improperly removed". Under the circumstances, the show cause notice was issued on 2.12.1999 demanding the duty payable by the respondent and also to levy interest and penalty in accordance in law. Being aggrieved by the order passed by the authority, the assessee filed an appeal before the Commissioner of Customs (Appeals) which appeal came to be dismissed. As against the same, the assessee filed an appeal before the CESTAT which appeal came to be allowed by considering the proviso the Section 68 of the Act. It is also relevant to mention In the meanwhile the assessee has challenged the action of the appellant by filing the writ petition u/s 23(2) of the Act which also ended in vain. Challenging the order of the CESTAT, the Revenue has filed this appeal.

3. We have heard the learned Counsel for the parties.

4. Mr. (sic) learned Counsel for the Revenue, mainly contends that the Tribunal has committed a serious error in granting relief to the assessee by amending the provisions of Section 68 of the Customs Act since as the same has come into effect from 14.5.2005 onwards. When the assessee has failed to get the relief on an earlier occasion from the hands of this Court, the amended provisions of Section 68 of the Act could not have been invoked by the Tribunal. He lastly contends that even if these contentions are held against the Revenue, the order of the Tribunal is liable to be set aside as the Tribunal by invoking the provisions of Section 68 of the Act could have given relief to the assessee only in regard to duty payable by it, but not in regard to arrears of rent, interest and penalty levied by the authorities. Therefore, he requests this Court to allow the appeal answering the questions of law in favour of the Revenue and against the assessee.

5. Per contra, the learned Counsel for the assessee contends that even though the writ petition filed by the assessee invoking the relief u/s 23(2) of the Act has been dismissed, there is no bar for the assessee to avail the benefit of the amended provision of Section 68 of the Act. He further contends that in view of the judgment of this Court in Commissioner of Customs Vs. i2 Technologies Software Pvt. Ltd., . According to him when the duty payable by the respondent-assessee has been set aside, the interest and penalty could not be levied by the revenue. Therefore, he requests this Court to dismiss the appeal.

6. Having heard the learned Counsel for the parties, we are of the opinion that

even if the writ petition filed by the assessee has been dismissed invoking the relief u/s 23(2) of the Customs Act on account of the amendment brought to Section 68 of the Act by introducing the proviso in the year 2003, there cannot be a bar to the assessee to make use of the amended provision since the case of the assessee was still pending before the authorities and the dismissal of the writ petition on an earlier occasion considering the provisions of Section 23(2) of the Act cannot be held to be a bar by applying the principles of res-judicata to invoke the proviso to Section 68 of the Act. Therefore, question No. 2 has to be answered against the Revenue and in favour of the assessee. In regard to question No. 1, we are of the opinion that, if the matter is pending on the date of the amendment is a prospective one, the prospective amendment would enure to the benefit of the assessee. Considering the facts and circumstances of the case, the amended provision would enure to the benefit of the assessee as the intention of the legislature is to give benefit to the assessee to grant exemption in respect of the duty payable by an assessee. Therefore, we answer question No. 1 against the Revenue and in favour of the assessee. So far as question No. 3 is concerned, we are of the opinion that, by invoking the proviso to Section 68 of the Act, the assessee can claim exemption of duty payable by it on account of the surrounding circumstances of this case provided, he relinquishes the title to the goods upon payment of rent, interest and other charges including penalty. When the amended proviso is so clear in regard to the grant of exemption in respect of the duty payable by an assessee, the assessee has to fulfil the other requirements of the proviso. In the circumstances, we are of the opinion that the Tribunal has committed an error in not considering the entire proviso to Section 68 of the Act. The tribunal without considering the same, has granted exemption in respect of the entire duty payable by the assessee and also the interest and penalty levied. Accordingly, we answer question No. 3 in favour of the Revenue. At this stage, the learned Counsel for the assessee contends that the assessee has paid the rents regularly to the ware-house. Therefore, we are of the opinion that, in order to compute the interest and penalty payable by the assessee and other charges, if any, we have to remit the matter to the Assessing Officer holding that in view of the proviso to Section 68 of the Act, the assessee can claim exemption in respect of the duty payable by it on relinquishing his title to the goods in the ware-house. Accordingly, we remit the matter to the Assessing Officer for the purpose of computation of interest, penalty and other charges, if any, payable by the assessee.

Accordingly, the appeal is dismissed.