
(2014) 01 DEL CK 0084

Delhi High Court

Case No: Writ Petition (C) 612 of 2014

Sony India Pvt. Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: Jan. 29, 2014

Acts Referred:

- Customs Act, 1962 - Section 17 17(4) 17(5) 46 50

Citation: (2014) 201 ECR 453 : (2014) 308 ELT 686

Hon'ble Judges: S. Ravindra Bhat, J; R.V. Easwar, J

Bench: Division Bench

Advocate: M.P. Devnath, Mr. Aditya Bhattacharya, Mr. Sharul Agarwal, Mr. Devinder Bagia and Mr. Amar Pratap Singh, for the Appellant; Jatan Singh, Naginder Benipal and Mr. Mudit Gupta, Advocates for R-1 and Mr. Satish Kumar, Senior Standing Counsel for Customs R-2, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. Issue notice. Mr. Satish Kumar, Sr. Standing Counsel accepts notice on behalf of customs.

2. The petitioner imports electronic goods including cameras. The present case concerns a consignment in respect of which bills of entry were filed between March and April, 2012; the petitioner claimed exemption from payment of 10% basic customs duty in respect of Sony Cameras of a particular model. Reliance was placed on Notification No. 25/2005 Cus dated 01.03.2005. This was, however, denied and the petitioner had to pay duty on the ground that the goods did not fit within the description "digital still image video cameras" in terms of Notification No. 25/2005 as amended later. The petitioner concededly cleared the goods under protest and paid Rs. 2.94 crores on 04.04.2012. Soon thereafter on 09.04.2012 it sought for reassessment in terms of Section 17(5) of Customs Act. It is stated that till date no order has been made.

3. The petitioner concurrently had applied for refund on 17.05.2012. The petitioner had made an application for refund. A show-cause notice was issued which was eventually confirmed on 12.11.2013. Apparently the petitioner is in appeal against that order denying the refund claim.

4. Learned counsel urges that the customs authority are duty bound to take up the reassessment application and pass a speaking order in terms of Section 17(5) of the Customs Act. In this regard learned counsel relies upon [Karan Associates Vs. Commissioner of Customs \(Import\)](#), and Commissioner of Customs, Chennai vs. Allufit India Pvt. Ltd., [(2009) 239 ELT 480 (Tri. Chennai)]. In each of these decisions, it was held that the assessing officer is mandatorily required to pass an order within the time stipulated. Learned counsel also relies upon the decision of the Kerala High Court reported as [Woodstruck Furniture Pvt. Ltd. Vs. Union of India](#),

5. Counsel for customs department submits that the petitioner is not entitled to any relief since the assessment has become final. It is highlighted that the petitioner did not prefer any appeal and its refund claim was correctly rejected considering all its contentions. The revenue also contended that the authority was not bound to re-assess the previous orders while considering the refund claim. He extensively relied upon the order of the Deputy Commissioner dated 12.11.2013 in this regard.

6. Section 17 of the Customs Act reads as follows:-

"Section 17. Assessment of duty." (1) An importer entering any imported goods u/s 46, or an exporter entering any export goods u/s 50, shall, save as otherwise provided in section 85, self assess the duty, if any, leviable on such goods.

(2) The proper officer may verify the self-assessment of such goods and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

(3) For verification of self-assessment under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any contract, broker's note, insurance policy, catalogue or other document, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained, and to furnish any information required for such ascertainment which is in his power to produce or furnish, and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any

notification issued therefor under this Act and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

(6) Where re-assessment has not been done or a speaking order has not been passed on re-assessment, the proper officer may audit the assessment of duty of the imported goods or export goods at his office or at the premises of the importer or exporter, as may be expedient, in such manner as may be prescribed.

7. Explanation. "For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods u/s 46 or an exporter has entered any export goods u/s 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received."

8. The decisions noted by the Deputy Commissioner i.e. Karan Associates (supra) and Allufit India Pvt. Ltd. (supra) themselves emphasise that the authorities have to pass speaking and reasoned orders. Furthermore the judgment in Karan Associates (supra) was rendered after Section 17 was amended and the present provision was brought into force in 2001. In the facts of the present case, it is apparent that the petitioner had cleared the goods on payment of duty under protest on 04.04.2012. Its application for reassessment was made on 04.09.2014. The entire tenor of the order of 12.09.2012 is that since the assessment had become final, refund cannot be allowed. Whilst the Deputy Commissioner could arguably take that position in the refund claim, the same reasoning cannot be applied to deny the statutory right of the petitioner for reassessment and a determination u/s 17(4) and (5). That the petitioner has appealed against the order of the Deputy Commissioner vis-à-vis refund would not in any manner relieve the customs authority of their obligation to deal with the application u/s 17(4) and (5). In view of the above discussion a direction is hereby issued to the concerned Assistant/Deputy Commissioner entitled to deal with the application u/s 17(4) and (5) made by the petitioner on 04.04.2012 to consider the same on its merits and pass a reasoned order in accordance with law. The process shall be completed after hearing the petitioner for which purpose adequate notice shall be given. The concerned officer i.e. Assistant/Deputy Commissioner shall complete the process within 2 weeks. The appeal is accordingly allowed in the above terms. Order dasti.