

Collector of Customs, Calcutta

Vs

M/s. Sun Industries

Civil Appeal No. 761 of 1988

(Sabyasachi Mukharji, S. Ranganathan JJ)

11.04.1988

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. This appeal under Section 130-E(b) of the Customs Act, 1962 (hereinafter called 'the Act') is directed against the order dated July 14, 1987 of the Customs Excise and Gold (Control) Appellate Tribunal (hereinafter called 'CEGAT'). By the impugned order the Tribunal allowed the appeal of the respondent.

2. On June 7, 1980 the respondent M/s. Sun Industries of Calcutta had shipped 6000 bundles containing 1,00,000 sets of plywood panels for tea chests on the M. V. Mohur Gang. The shipment of the said goods was intended for delivery at Colombo under claim for drawback on the said goods under Section 75 of the Act against shipping bill. On June 20, 1980 on proceeding to the voyage after shipment of the goods, the ship developed engine trouble on the way and returned back and ran aground in Indian territorial waters at the port of Paradeep. The fitting stores and cargo vessel had been salvaged into India under the supervision of Port Trust, Paradeep. The respondent thereafter applied for drawback under Section 75 of the Act. By an order dated October 25, 1986, the Assistant Collector of Customs rejected the claim for drawback on the said goods under Section 75 of the Act read with Section 2(18) and Rule 2(c) of the Customs and Central Excise Duties Drawback Rules, 1971. Being dissatisfied the respondent appealed to the Appellate Collector of Customs, Calcutta. By the order dated February 12, 1981 the Appellate Collector rejected the appeal holding that the ship ran aground in territorial waters of India, therefore, the said goods could not be deemed to have been exported. Dissatisfied with the said order the respondent preferred a revision under Section 131 of the Act. The revision petition was thereafter transferred to the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi.

3. Section 75 of the Act provides drawback on imported materials used in the manufacture of goods which are exported. The said section reads as follows :

75(1) Where it appears to the Central Government that in respect of goods of any class or description manufactured in India, being goods which have been entered for export and in respect of which an order permitting the clearance and loading thereof for exportation has been made under Section 51 by the proper officer, or being goods entered for export by post under Section 82 and in respect of which an order permitting clearance for exportation has been made by the proper officer a drawback should be allowed of duties of customs chargeable under this Act on any imported materials of a class or description used in the manufacture of such goods, the Central

Government may, by notification in the official Gazette, direct that drawback shall be allowed in respect of such goods in accordance with, and subject to, the rules made under sub-section (2).

(1-A) Where it appears to the Central Government that the quantity of a particular material imported into India is more than the total quantity of like material that has been used in the goods manufactured in India and exported outside India, then, the Central Government may, by notification in the official Gazette, declare that so much of the material as is contained in the goods exported shall, for the purpose of sub-section (1), be deemed to be imported material.

(2) The Central Government may make rules for the purpose of carrying out the provisions of sub-section (1), and, in particular, such rules may provide -

(a) for the payment of drawback equal to the amount of duty actually paid on the imported materials used in the manufacture of the goods or as is specified in the rules as the average amount of duty paid on the materials of that class or description used in the manufacture of export goods of that class or description either by manufacturers generally or by any particular manufacturer;

(b) for the production of such certificates, documents and other evidence in support of each claim of drawback as may be necessary;

(c) for requiring the manufacturer to give access to every part of his manufactory to any officer of customs specially authorised in this behalf by the Assistant Collector of Customs to enable such authorised officer to inspect the processes of manufacture and to verify by actual check or otherwise the statements made in support of the claim for drawback.

4. Section 2(18) states "export" with its grammatical variations and cognate expressions, means taking out of India to a place outside India. The Customs and Central Excise Duties Drawback Rules, 1971 framed under the Act by Rule 2(c) also provides as follows :

2(c) 'export' with its grammatical variations and cognate expressions, means taking out of India to a place outside India and includes loading of provisions or store or equipment for use on board vessel or aircraft proceeding to a foreign port :

5. The Tribunal found that the shipment was under a CIF contract and that on the loading of the goods on board the title passed to the purchaser. The Tribunal found that the ship left Calcutta and in fact it had passed beyond the territorial waters of India and the engine trouble developed while the ship was in the High Seas and, thus, by reason of the ship having passed beyond territorial waters with the goods on board, the export of the goods out of India had been completed. It appears that the subsequently the ship decided to sail into the territorial waters was of no relevance. The Tribunal accepted that where the ship developed engine trouble, it was beyond the territorial waters.

6. In the view of the matter, the Tribunal was of the view that under the scheme of Section 75, export having been completed, the respondent was entitled to the benefit of the drawback scheme.

7. On behalf of the revenue it had been contended before the Tribunal and it was reiterated before us by Shri Ganguli that proof must be given that the goods had reached 'a place outside India' in view

of Section 2(18) of the Act. It was emphasised that in order to be export under Section 2(18) of the Act the goods must be taken out to a place outside India. Shri Ganguli submitted that taking out to a place outside India meant and comprehended delivery of goods to a place outside India. Section 35 of the Act as it stood prior to the amendment in 1983 was relied on. The Madras High Court had occasion to consider this question in the case of Lucas TVS v. Assistant Collector ((1987) 28 ELT 266). We are of the opinion that in view of the wording of the section, the goods went out of the territorial waters. When the ship got clearance and moved out of the territorial waters the export was complete. The title to the same goods passed to the exporters. The facts as they emerge are that the goods reached a place in the high seas which is outside India and the title of the goods also passed to the purchasers. It is true that the goods did not land in any place because of the defect in the ship. But the expression "taking out to a place outside India" would also mean a place in high seas. It is beyond the territorial waters of India. High seas would also mean a place outside India, if it is beyond the territorial waters of India. Therefore, if the goods were taken out to the high seas outside territorial waters of India, they will come within the ambit of expression "taking out to a place outside India". Indubitably the goods had been taken out of India. "Place" according to Webster Comprehensive Dictionary, International Edition page 964 means a particular point or portion of space, especially that part of space occupied by or belonging to a thing under consideration; a definite locality or location. It also means an open space or square in a city. Therefore, in international trade the ship beyond the territorial waters of a country would be a place outside the country, if the goods are taken to that place, that is to say, a situation outside the territorial waters of a country and the title to the goods passes to the purchasers. Then, in our opinion, the goods are taken to a place outside India.

8. The expression "place" will depend for its connotation on the context in which it is used. In clause of charter party requiring charterer to procure safe "place" for discharge of cargo, quoted word meant spot selected to drop anchor plus area over which taker might swing on tide and characterer's duty was not fulfilled merely by selecting area containing both safe and unsafe berths. The word "place" as used in a statute relating to searching for stolen goods in any store, shop, warehouse, or other building or place in a town, includes a steam boat or vessel moored at the wharf. See Words and Phrases, Permanent Edition, Vol. 32-A, page 128. The word "place" is generally found in conjunction with other words which give it a colour, and is usually controlled by its context. For example, "place for water" includes a well. See Stroud's Judicial Dictionary, third edition, volume 3, pages 2199 and 2208.

9. In that view of the matter, in our opinion, there was export of the goods in terms of Section 75 of the Act. The fact that the ship was brought back to India because of the damages in the ship does not, in our opinion, affect the position.

10. In the premises, we are of the opinion that the Tribunal was right in the view it took and the respondent was entitled to the benefit of Section 75 of the Act. In the aforesaid view of the matter, we decline to admit the appeal and the same is accordingly rejected.

</html