

Union of India and Another

Vs

Kirloskar Pneumatic Co. Ltd

Civil Appeal No. 7722 of 1996

(B. P. Jeevan Reddy, S. C. Sen JJ)

06.05.1996

ORDER

1. Leave granted. Heard the counsel for the parties.
2. This appeal is directed against, what is called, "Minutes of the order" made by the Bombay High Court on 23-6-1995. The order read :

"1. The petitioners will file an application for refund, in respect of the consignments imported as referred to in this petition, in the prescribed form as per the amended Section 27 of the Customs Act, 1962, within 2 weeks from today.

2. The respondents will dispose of the aforesaid Refund Claim, on merits, within 10 weeks from the filing of the same.

3. The respondents shall not reject the refund application on the ground that it is time-barred.

4. The petition is disposed of accordingly.

5. No order as to costs."

3. The Revenue is questioning the validity and correctness of clause (3) of the said order whereby the High Court has directed the authorities under the Customs Act not to reject the respondent's application for refund on the ground that it is time-barred and to dispose of it on merits.

4. The respondent imported certain goods between February 1983 and July 1985. There was a dispute between the respondent and the Customs authorities with respect to the classification of the goods. The duty as demanded by the authorities was paid by the respondent and the goods cleared. Thereafter, the respondent filed the refund application. The appellant says that the respondent preferred an appeal which was rejected by the appellate authority and that instead of filing the further appeal, the respondent approached the Bombay High Court. The respondent disputes this statement. He says that he did not file any appeal but approached the High Court straightaway. Be that as it may. The prayer in the writ petition was to issue an appropriate writ, order and direction to the Customs authorities to refund the excess customs duty levied upon the goods imported by the respondent and collected from it. The respondent also claimed interest at the rate of 18% per annum on the said order. The writ petition was filed in the year 1987.

5. The appellants state that they contested the writ petition but the High Court passed the impugned

"minutes of the order". Indeed Mr. Hidayatullah, the learned counsel for the respondent, states that the order impugned herein is the standard order which is usually passed by the Bombay High Court in all such matters.

6. In this appeal we are not concerned either with the maintainability of the writ petition or its merits. The only contention raised and which we are considering is whether the direction given by the High Court that the Customs authorities "shall not reject the refund application on the ground that it is time-barred", is valid in law. With respect we think that it is not.

7. In *CCE v. Doaba Coop. Sugar Mills Ltd.*, [1988 Supp SCC 68 : 1989 SCC (Tax) 2 : AIR 1988 SC 205 : (1988) 37 ELT 478], this Court had observed : (SCC pp. 684-85, para 6)

"6. It appears that where the duty has been levied without the authority of law or without reference to any statutory authority or the specific provisions of the Act and the Rules framed thereunder have no application, the decision will be guided by the general law and the date of limitation would be the starting point when the mistake or the error comes to light. But in making claims for refund before the departmental authority, an assessee is bound within four corners of the statute and the period of limitation prescribed in the Central Excise Act and the Rules framed thereunder must be adhered to. The authorities functioning under the Act are bound by the provisions of the Act. If the proceedings are taken under the Act by the department, the provisions of limitation prescribed in the Act will prevail. It may, however, be open to the department to initiate proceedings in the civil court for recovery of the amount due to the department in case when such a remedy is open on the ground that the money received by the assessee was not in the nature of refund. This was the view taken by the Tribunal in a previous decision in the case of *Miles India Ltd. v. Asstt. Collector of Customs*, [(1987) 30 ELT 64 : 1985 ECR 289 (SC)], but it was assailed before this Court. The appeal was withdrawn. This Court observed that the Customs authorities, acting under the Act, were justified in disallowing the claim for refund as they were bound by the period of limitation provided therefor in the relevant provisions of the Customs Act, 1962. If really the payment of the duty was under a mistake of law, the party might seek recourse to such alternative remedy as it might be advised. See the observations of this Court in *Miles India Ltd. v. Asstt. Collector of Customs*, [(1987) 30 ELT 64 : 1985 ECR 289 (SC)]."

8. Inasmuch as the earlier decision of this Court in *Miles India Ltd. v. Asstt. Collector of Customs*, [(1987) 30 ELT 64 : 1985 ECR 289 (SC)] has practically been reproduced in the above extract, we do not think it necessary to refer to that decision.

9. Section 27 of the Customs Act provides for claims for refund of duty. The section has been substituted by a new section by the Central Act 40 of 1991 (with effect from 20-9-1991). The amended Section 27 severely curtails the right to refund but for the purpose of this appeal, it is not necessary to refer to that aspect. Suffice it to say that sub-sections (1) and (2) of Section 27 (both before and after amendment) provide for filing an application for refund within a period of six months of the payment of duty except in a case where it has been paid under protest. What is relevant herein is sub-section (4) of unamended Section 27 and sub-section (3) of amended Section 27. It would be sufficient if we set out the said sub-sections. Sub-section (4) of unamended Section 27 read as follows :

"27. (4) Save as provided in Section 26, no claim for refund of any duty shall be entertained except in accordance with the provisions of this section."

Sub-section (3) of amended Section 27 reads thus :

"27. (3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the appellate tribunal or any court or in any other provision of this Act or the regulations made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2)."

10. According to these sub-sections, a claim for refund or an order of refund can be made only in accordance with the provisions of Section 27 which inter alia includes the period of limitation mentioned therein. Mr. Hidayatullah submitted that the period of limitation prescribed by Section 27 does not apply either to a suit filed by the importer or to a writ petition filed by him and that in such cases the period of limitation would be three years. The learned counsel refers to certain decisions of this Court to that effect. We shall assume for the purposes of this appeal that it is so, notwithstanding the fact that the said question is now pending before a larger Constitution Bench of nine Judges along with the issue relating to unjust enrichment. Yet the question is whether it is permissible for the High Court to direct the authorities under the Act to act contrary to the aforesaid statutory provision. We do not think it is, even while acting under Article 226 of the Constitution. The power conferred by Articles 226/227 is designed to effectuate the law, to enforce the rule of law and to ensure that the several authorities and organs of the State act in accordance with law. It cannot be invoked for directing the authorities to act contrary to law. In particular, the Customs authorities, who are the creatures of the Customs Act, cannot be directed to ignore or act contrary to Section 27, whether before or after amendment. Maybe the High Court or a civil court is not bound by the said provisions but the authorities under the Act are. Nor can there be any question of the High Court clothing the authorities with its power under Article 226 or the power of a civil court. No such delegation or conferment can ever be conceived. We are, therefore, of the opinion that the direction contained in clause (3) of the impugned order is unsustainable in law. When we expressed this view during the hearing Mr. Hidayatullah requested that in such a case the matter be remitted to the High Court and the High Court be left free to dispose of the writ petition according to law.

11. The appeal is accordingly allowed, the order under appeal is set aside in its entirety and the matter is remitted to the High Court for disposal in accordance with law. We reiterate that we express no opinion upon the maintainability or the merits of the writ petition. That is for the High Court to consider.

12. There shall be no order as to costs.