SUPREME COURT OF INDIA

Ranadip Shipping & Transport

Vs.

Collector of Customs

(R Lahoti and N S Hegde JJ.)

18.08.1999

ORDER

R.C. LAHOTI, J.

1. Notice under proviso to Sub-section (1) of Section 28 of the Customs Act, 1962 was issued on 13th May, 1985 and served on M/s. Ranadip Shipping & Transport Co. (Pvt) Ltd., the appellant, (hereinafter RST, for short) and M/s Sea Land Service Incorporated (the respondent No. 2) (hereinafter SLS, for short) requiring them to show cause why duty amounting to Rs. 37,97,434/- be not levied and recovered from them apart from assessing penalty and other action on account of short levy occasioned by wilful misstatement and suppression of facts by the importers, M/s. RST and their principals, M/s. SLS, It is not disputed that in the transaction in question the appellant had acted in the capacity of agent of respondent No. 2. The adjudicating authority, i.e., the Collector of Customs, Bombay by Order -In-Original dated 3.5.1988 held as under:-

(1) The chassis should be valued on the basis of the valuation shown in the show cause notice and the demand notice i.e. at the unit price US$ 2,535/- per chassis CIF Bombay. The rate of duty and the exchange should be calculated on the rate prevailing on the date of filing of the 4 Bs/E in respect of the 84 chassis out of 184 chassis admittedly imported.

(2) Customs duty should be recovered from M/s. Ranadip in respect of 184 chassis imported and put into use in Bombay port in terms of the provisions of Section 28 of the Customs Act, deducting the duty already paid.

(3) M/s. Ranadip and M/s. Sea Land are found to have acted or omitted to act in such a manner making these goods otherwise liable to confiscation under the provisions of Customs Act, 1962. Further, as the evidence on record has brought out a case of wilful delaying of payment of Customs

Duty I find that M/s. Ranadip Shipping & Transport Co. Pvt. Ltd., as well as their principals M/s. Sea Land Service Inc. have rendered themselves for penal action also. I therefore impose a personal penalty of Rs. 6 lakhs (Rs. Six Lakhs only) on M/s. Ranadip Shipping & Transport Co. Pvt. Ltd. and Rs. 6 lakhs (Rs. Six Lakhs only) on M/s. Sea Land Services Inc. The demand Notice for recovery issued on 15.5.88 is also confirmed.

2. The appellant and the respondent No. 2 preferred separate appeals to the CEGAT. The two appeals have been disposed of by a common order dated 14.3.1997. The Tribunal has partly allowed the appeals giving some relief admissible by way of drawback maintaining rest of the order of adjudication. M/s. RST have come up to this Court by filing an appeal under Section 130E of the Customs Act, 1962.

3. During the course of hearing it was agreed between the learned Counsel for all the parties that in so far as the quantum of assessment is concerned, it has achieved a finality and none of the parties was disputing the same. The only dispute surviving for adjudication is who should be held liable to pay. According to the appellant - M/s. RST, they were agents of the principals - M/s. SLS, the respondent No. 2. The learned Counsel for the appellant submitted placing reliance on Section 147 that except on proof of any wilful act, negligence or default of the agent resulting into no levy or short-levy or erroneous refund of the duty, the agent could not have been held liable. No such finding has been recorded by any of the authorities below. As such the appellant should have been exonerated and the liability fastened only on the principals, i.e., the respondent No. 2. The learned Counsel for the respondent No. 2 has on the other hand submitted that insofar as the customs duty is concerned, the liability has been rightly fastened upon the appellant and if at all it could be passed on to the respondent No. 2 under the contract entered into between the appellant and the respondent No. 2 then that was not a matter to be adjudicated upon in these proceedings and it was still open to the appellant to seek enforcement of private rights and obligations, contractual in nature, by initiating appropriate proceedings before a competent forum, i.e., the Civil Court.

4. The learned Counsel for the appellant has carried us through the impugned order of the Tribunal, a perusal whereof clearly shows the appellant having raised a plea before the Tribunal to the effect that the Collector of Customs was not justified in exonerating the respondent No. 2. The learned Counsel for the appellant has also invited our attention to a number of documents available on record wherein the respondent No. 2 through its authorised officers had on a number of occasions undertaken and acknowledged that the liability if any for the payment of customs duty shall be theirs. The grievance of the learned Counsel for the appellant is that the Tribunal has very superficially dealt with and disposed of the appellant's contention without adverting to the several documents available on record and proceeded to hold that if the agreement between the two companies provided for SLS to compensate RST for the payment of any dues or charges then it was for them to take up the matter with SLS for such appropriate compensation.

5. It is true that the appellant did not in its memo of appeal implead the respondent No. 2 as a party respondent before the CEGAT. However, the fact remains that the appellant and the respondent No. 2 had both preferred their separate appeals before the Tribunal. Both the appeals were taken up analogously for hearing. The plea that not the appellant but the respondent No. 2 should have been held liable for payment of duty was specifically raised and argued before the Tribunal in the presence of the latter. It cannot therefore be said that the respondent No. 2 did not have the opportunity of meeting the plea. The order of the Tribunal is rendered defective and hence not sustainable in law inasmuch as it does not show application of mind on the part of the Tribunal to all

the material available on record as also to the legal consequences flowing from the provisions of Section 147 of the Act. In our opinion, the ends of justice demand the matter being remitted back to the Tribunal to decide the question of liability between the appellant and the respondent No. 2: Whether both or only one of them, and if so, which of the two, would be liable to pay the duty and penalty as quantified. The technicality of respondent No. 2 having not been joined as party respondent in the appeal filed by the appellant before the Tribunal should not come in the way of the plea being heard and adjudicated upon on merits by the Tribunal.

6. The appeals are allowed. The impugned order dated 14.3.97 passed by the Tribunal is set aside. The matter is remitted back to the Tribunal which shall hear all the parties and decide by taking into consideration all the pleas raised before it including Section 147 of the Customs Act, 1962 on whom falls the liability to pay the impugned demand.

7. It was pointed out that an amount of Rs. 10 lacs was deposited by the appellant by way of pre-deposit as a condition precedent to the hearing of the appeal by the Tribunal. Another amount of Rs. 5 lacs has been deposited by the appellant with the adjudicating authority pursuant to an interim order passed by this Court. This amount of Rs. 15 lacs shall continue to remain in deposit and the Tribunal shall hear the appeals on merits without insisting on any further deposit against the demand impugned before it.

8. The appeals stand disposed of accordingly. No order as to the costs.