2012 (280) E.L.T. 374 (Kar.)

IN THE HIGH COURT OF KARNATAKA AT BANGALORE
N. Kumar and Ravi Malimath, JJ.

COMMISSIONER OF CUS., BANGALORE
Versus
NEXT FASHION CREATORS PVT. LTD.

C.S.T.A. No. 39 of 2006, decided on 11-8-2011

Remission of duty - Goods imported duty free with export obligation - Destruction by fire while being warehoused - No case made out of pilferage - *HELD :* Importer was entitled to remission of duty - It could not be denied on grounds (i) admitted discrepancy between valuation submitted for insurance claim and to Customs department, (ii) EOU was not entitled to remission, and (iii) importer had not taken proper care of the goods - All these factors were extraneous for remission claim under Section 23 of Customs Act, 1962. *[para 4]*

Appeal dismissed

REPRESENTED BY : Shri S. Pramod, Advocate, for the Appellant.
Smt. Rukmini Menon, Advocate, for the Respondent.

[Judgment per : N. Kumar, J.]. - This appeal is by the revenue challenging the order passed by the Tribunal which has allowed the claim of remission of customs duty payable by the assessee. The assessee is 100% export oriented unit. They imported various duty free materials. Due to the fire accident on 7-4-2004 in the stores of the assessee's unit, the entire raw materials had been burnt alongwith certain documents. The duty foregone on the goods destroyed by fire was Rs. 48,21,830/-. The Superintendent of Customs directed the assessee to pay the said amount. The assessee filed an application on 6-9-2004 with the Deputy Commissioner of Customs, Bangalore, claiming remission of duty under Section 23 of the Customs Act, 1962 (for short 'the Act') in respect of the goods destroyed in the fire accident. As the factum of fire accident was communicated to the Department, they undertook investigations and investigations reveal that the value of the goods destroyed in the fire accident as claimed in the insurance claim was Rs. 4,20,78,539/-, however, the value of the goods furnished to the Customs Department was Rs. 90,09,012/-. Thus there was huge variation between insurance figures and what has been stated before the Customs. The total value of raw materials and accessories destroyed in the fire works out to Rs. 1,89,66,098/-. The duty on the above goods comes to Rs. 90,48,067/-. In fact, the assessee paid the amount on various dates. However, while considering the claim for remission, the Commissioner confirmed the demand of duty of Rs. 90,48,067/- and the amount already paid were apportioned towards above levies. The Commissioner rejected the claim for remission on the ground that it does not apply to the case of failure to account for warehoused goods. He also observed that Section 23 of the Act has no relevance to the goods imported and cleared vide notification dated 52/2003. The said order was challenged by the assessee before the Tribunal. The Tribunal on consideration of the entire material on record and in particular, wordings of Section 23 of the Act, held that if the loss is because of pilferage, remission would not be applicable. In the instant case, the goods have been warehoused : they have not been cleared for home consumption. The revenue has not shown that goods have been destroyed because of pilferage. The fact of the fire accident is not in dispute. Therefore, all the conditions for claiming remission under Section 23(1) have been fulfilled and therefore, allowed remission of duty paid on the goods. Aggrieved by the same, revenue is in appeal.

2. The learned counsel for the revenue assailing the impugned order contends that because of the discrepancy in the figures given by the assessee before the Insurance and the Customs and coupled with the fact that during investigation, the Managing Director of the assessee admitted the discrepancy in the figures and paid the duty and that they have not taken proper care to protect those goods, the Commissioner of Excise was justified in confirming the demand and the Tribunal has erroneously interfered with the said order.

3. *Per contra*, learned counsel for the assessee supported the impugned order.

4. The facts are not in dispute. The assessee is 100% export oriented unit. It has imported goods without paying duty. If they have performed their export obligations, they were not liable to pay the duty before that obligation could be performed, when the goods were warehoused, there was a fire accident; in the fire accident, the entire goods which were imported were destroyed. It is nobody's case that there was any pilferage of these goods. Under these circumstances, when the claim of remission is made under Section 23 of the Act, legal requirements to be fulfilled by the assessee to claim remission stands fully satisfied. The Commissioner was wholly in error in denying the said benefit on the ground that the said benefit is not entitled to EOU under the notification and that the assessee did not take care of the goods imported and also on the ground that the Managing Director of the assessee admitted discrepancy in the figures. All these factors which weighed with the Commissioner are totally extraneous for considering the claim for remission under Section 23 of the Act. The Tribunal on proper appreciation of the material on record and correct interpretation of Section 23 of the Act was justified in setting aside the order passed by the Commissioner of Customs and in granting relief to the assessee. In that view of the matter, we do not see any merit in this appeal and accordingly, it is dismissed. No costs.