

## Shipping Corporation of India Vs. Collector of Customs

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Calcutta

**Decided On :** Dec-01-1984

**Reported in :** (1994)(69)ELT334Tri(Kol.)kata

**Appellant :** Shipping Corporation of India

**Respondent :** Collector of Customs

### Judgement

1. The Shipping Corporation of India Ltd., 13, Strand Road, P.O. Box No. 2653, Calcutta - 700 001, has filed eight appeals being aggrieved from Order Nos. 736/81, 742/81, 741/81, 740/81, 739/81, 738/81, 737/81 and 735/81 dated the 15th April, 1981 passed by the Appellate Collector of Customs, Calcutta. The aforesaid eight appeals were presented in the Registry on the 5th November, 1984 in the form of letters with necessary documents and the aforesaid appeals had come up for hearing on the 19th November, 1984 and this defect was brought to the notice of Shri P. Chatterjee, the learned authorised representative of the appellant. He had requested for an adjournment and had pleaded that since originally a revision application was filed, he was under the honest belief that the same procedure has to be followed in the filing of appeals. However, he conceded that the appeals should have been filed in proper form No. CA-3 and had requested for adjournment for the rectification of the defect of the appeal and the Junior Departmental Representative had stated that he has got no objection for adjournment and in the interests of justice, the aforesaid appeals were adjourned for 29th November, 1984. The appellant again has presented the aforesaid appeals on form No. CA-3 on the 26th November, 1984. With all the aforesaid appeals, the appellant had attached applications for condonation of delay duly supported with an affidavit. In addition to the prayers made for condonation of delay, the learned authorised representative has argued that the appellant was under the honest belief that one revision application had to be filed against a consolidated order disposing of nine appeals by the Appellate Collector of Customs, Calcutta and accordingly, the appellant had filed one revision petition before the Additional Joint Secretary and in the past, filing of one appeal against consolidated order irrespective of number of orders, was duly accepted by the Central Government. He has pleaded that it is a bona fide mistake on the part of the appellant and has pleaded that this Court should exercise its discretion in condoning the delay under Section 129(A)(5) of the Customs Act, 1962, otherwise the appellant shall suffer irreparable loss.

2. In reply to the learned authorised representative's argument, Shri A.K. Chatterjee, the learned Junior Departmental Representative has submitted that in view of the peculiar circumstances of the case, he has got no objection if the delay in filing of appeals is condoned. He has stated that he is not pressing his right for the filing of cross objection in this case. Shri A.K. Chatterjee, the learned J.D.R. has also conceded that this Court has got jurisdiction in respect of the above 8 appeals as the same are

the orders passed under Section 28 (Old) of the Customs Act, 1962 and provisions of the Finance Act, 1984 for transferring the appeal to the Central Government are not applicable in this case as the order was passed by the Appellate Collector of Customs and not by the Collector (Appeals) Customs.

3. After hearing both the sides, I hold that the appellant was prevented by sufficient cause in the late submission of the aforesaid eight appeals. Since the original revision application filed before the Central Government was within the limitation and the aforesaid 8 appeals were filed by the appellant in response to the Registry's requirement, the delay in filing of the appeals is condoned.

4. On merits, Shri P. Chatterjee, the learned authorised representative has submitted that the aforesaid 8 appeals are in respect of imposition of penalties under Section 116 of the Customs Act, 1962. The details of aforesaid 8 appeals are as under:-----Sl. No. Appeal Order of Appellate Order-in- Penalty amount No. Collr. of Customs Original1.

193/84 736/81 S-355/78of Rs. 1850/- dt. 15-4-1981 25-2-19802.

194/84 742/81 S-360/78of Rs.784/- dt. 15-4-1981 25-2-19803.

195/84 741/81 S-438/78of Rs.800/- dt. 15-4-1981 16-9-19804.

196/84 740/81 S-445/78of Rs.2000/- dt. 15-4-1981 22-9-19805.

197/84 739/81 S-414/78of Rs.2010/- dt. 15-4-1981 15-7-19806.

198/84 738/81 S-361/78of Rs.8249/- dt. 15-4-1981 25-2-19807.

199/84 737/81 S-359/78of Rs.9721/- dt. 15-4-1981 25-2-19808.

200/84 735/81 S-357/78of Rs. 1910/- dt. 15-4-1981 25-2-1980 The learned authorised representative has pleaded that the shortages were recorded after discharge of the cargo from the vessel during the insurance survey for which the appellant was asked to show cause as to why penalty should not be imposed on them under Section 116 of the Customs Act, 1962 and the appellant in reply to the said show cause notice had stated that the insurance survey was held long after discharge and without the appellant's knowledge when the carrier's liability was extinguished. He has referred to the Public Notice No.132 and has also referred to a Calcutta High Court judgment in the matter No. 1561 of 1981 delivered on 2nd February, 1983 in the case of Everett (India) Pvt. Ltd. v. Assistant Collector of Customs & Anr. He has pleaded that the facts of all the 8 appeals are similar and all the appeals are covered by Public Notice No. 132 dated 14th December, 1973 of the Calcutta Custom House as well as the Calcutta High Court judgment cited by him. He has pleaded that in view of the Public Notice No. 132 and the Calcutta High Court judgment and the earlier judgments of this Court on the same issue, the appellant's appeal should be accepted and the orders as to the imposition of penalties should be quashed.

5. In reply Shri A.K. Chatterjee, the learned J.D.R. has stated that he has got nothing to say in view of the Calcutta High Court judgment in the case of Everett (India) Pvt. Ltd. v. Assistant Collector of Customs in Matter No. 1561 of 1981.

6. After hearing both the sides and keeping in view the facts and circumstances of the case, I hold that the appellant's 8 appeals are fully covered by the Calcutta High Court judgment in the matter No.1561 of 1981 in the case of Everett (India) Pvt. Ltd. and the facts of the appellant's cases are similar. There is no reason as to why the appellant should not be given the benefit of the Calcutta High Court judgment as stated above. This Court has already passed many orders on this issue and has repeatedly followed the said Hon'ble Calcutta High Court judgment. I, therefore, order cancellation of the orders imposing penalties of Rs. 1,850/-, Rs. 784/-, Rs. 800/-, Rs. 2,000/-, Rs. 2,010/-, Rs. 8,249/-, Rs. 9,271/- & Rs. 1,910/- totalling Rs. 27,324/- (Rupees twenty seven thousand three hundred twenty four only). In the result, the said 8 appeals are accepted. The revenue is directed to refund the penalties paid by the appellant in respect of the aforesaid 8 appeals after making necessary verification as to their payment within 4 months from the date of this order. The Registry is directed to place the copies of this order in all the 8 appeals' files.

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