Supreme Court of India
Collector Of Customs, Cochin vs Trivandrum Rubber Works Ltd. on 11 November, 1998
Equivalent citations: 2000 (69) ECC 27, 1999 ECR 171 SC, 1999 (106) ELT 9 SC, JT 1998 (9) SC 485, (1999) 2 SCC 553
Bench: S V Manohar, A Misra
ORDER Sujata V. Manohar and A.P. Misra, JJ.

1. The respondent, M/s. Trivandrum Rubber Works Ltd. imported Neoprene Foam Sheets which were cleared under a Bill of Entry for home consumption through their clearing agent, M/s. Achuthan Pillai & Co. The goods were cleared on 9-4-1986. On 9-10-1986, a notice to the importer i.e. the respondent herein was issued by the appellant under Section 28 of the Customs Act, 1962 calling upon the respondent to pay duty amounting to Rs. 20,20,370.80 on the ground that the goods were correctly assessable under Tariff Heading 4008.11. The notice, therefore was in respect of short-levy of duty. The clearing agents, M/s. Achuthan Pillai & Co. were served with this demand on 9-10-1986. The respondent was served with the notice on 14-10-1986.

2. Sub-section (1) of Section 28 of the Customs Act, provides as follows:

28. Notice for payment of duties, interest etc. - (1) When any duty has not been levied or has been short-levied or erroneously refunded or when any interest payable has not been paid, part paid or erroneously refunded, the proper officer may,

(a) in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital within one year;

(b) in any other case within six months;

from the relevant date, serve notice on the person chargeable with the duty or interest which has not been levied or charged or which has been so short-levied or part paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;

....

3. The period of limitation for service of notice, therefore, when duty has been short-levied, is six months. The notice on the clearing agent was served on the last day before expiry of limitation while the respondent itself was served with the notice after the expiry of the period of limitation.

4. The Tribunal has held that the demand contained in the said notice is time barred and hence cannot be recovered. The appellant, however, contends that since the notice on the clearing agent of the respondent was served on the last date of limitation, the notice is served within time, and the claim against the respondent is not barred under Section 28.

5. The narrow question which requires consideration is whether a notice to the importer which is served on the clearing agent of the importer, long after the goods have been cleared by the clearing agent, will amount to a valid notice to the respondent. In this connection, the appellant has relied on Section 147(3) of the Customs Act, 1962. Sub-section (3) of Section 147 provides, "when any person is expressly or impliedly authorised by the...importer...to be his agent in respect of such goods for all or any of the purposes under this Act, such person shall, without prejudice to the liability of the owner or importer...be deemed to be the owner or importer...". The proviso to Section 147(3), however, makes it clear that where any duty is, inter alia, short-levied for a reason other than any wilful act, negligence or default of the agent, the agent shall not be liable for payment of that duty, save and except where, in the opinion of the Assistant Collector of Customs, the duty cannot be recovered from the owner or the importer. Section 147(3) does not deal with the validity of service of a notice to an owner/importer which is served not on him but on his clearing agent after the goods have been cleared. Section 147(3) read with the proviso specifies circumstances in which the clearing agent can be treated as the owner/importer of the goods and made liable for the payment of duty. In the present case no notice is addressed to the clearing agent making him liable for the short-levied duty. The notice is directed only on the respondent.

6. Under Section 28, notice has to be served on "the person chargeable with duty". The person chargeable with duty in the case of imports is the importer. If the clearing agent of the importer is sought to be made liable as person chargeable with duty in the circumstances set out in Section 147(3) read with proviso, the notice must be addressed to the clearing agent and must set out that he is being made liable under the proviso to Section 147(3).

7. We do not find that in the present case, any notice has been served on the clearing agent on the ground that the department cannot recover the duty from the owner or importer thus making the agent liable. The notice, therefore, cannot be construed as a valid notice against the agent for the recovery of any duty from the agent under the proviso to Section 147(3). In fact, in the present case, on 9-10-1986, such notice could not have been served on the agent because on 9-10-1986, there was nothing which would lead the Assistant Collector of Customs to come to the conclusion that the duty could not be recovered from the importer. Even a notice for recovery of duty had not been served on the importer on 9-10-1986. Notice has been served on the importer only later, on 14-10-1986, when such service of the notice was barred by limitation. The proviso to Section 147(3) does not contemplate a case where the claim against the principal i.e. the importer is time barred because of a default on the part of the department itself. It refers to a case where a department after taking all necessary steps under the Customs Act, 1962 is, for some reason, unable to recover the duty from the importer or owner. That is not the case here. We have not been shown any reason why the notice could not be served on the importer within the period of six months prescribed under Section 28. Therefore, on the facts of the present case, the proviso to Section 147(3) is not attracted.

8. In the present case, notice has been given under Section 28 to the owner/importer as a person chargeable to duty. The notice must, therefore, be served on the owner/importer. A service on the clearing agent of the owner/importer long after the clearing agent has ceased to deal with the goods in question under the Customs Act, cannot be treated as valid service of notice on the owner/importer.

9. Learned Counsel for the appellant relied upon Section 229 of the Contract Act under which any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequences as if it had been given to or obtained by the principal. A contract between the importer and his clearing agent, however, is a special contract under which a clearing agent is authorised to perform various functions under the Customs Act for the purpose of clearing the goods from the customs. Once he has discharged all his duties and functions as such agent and the goods in question have been cleared and delivered to the importer/owner, his work as clearing agent in respect of the goods ordinarily comes to an end. Any notice served on him thereafter in respect of goods already cleared cannot be construed as a notice given in the course of business of clearing the goods concerned, transacted by him for the principal.

10. We were also shown Customs House Agents Licensing Regulations, 1984. There is no provision under these Regulations which authorises clearing agent who has already cleared the goods and completed his business qua these goods on behalf of the principal, to accept a notice on behalf of the principal.

11. Learned Counsel for the appellant relied upon a decision of the CEGAT in Almelo Laboratories Pvt. Ltd. v. Collector of Customs (Tribunal) in support of his contention that a notice served on the clearing agent under Section 28 is, in law a valid notice on the importer himself. We are not in agreement with the view taken by the CEGAT.

12. The Tribunal has found on facts that there is no evidence to show that M/s. Achuthan Pillai & Co. continued to remain as agents of the respon dent or that as on 9-10-1986 M/s. Achuthan Pillai & Co. had been authorised or empowered by the respondent to receive notice under the Customs Act on their behalf. The Tribunal has also noted that M/s. Achuthan Pillai & Co. did not acknowledge receipt of the notice as for or on behalf of the respondent. It has rightly rejected the appeal of the department, looking to the totality of circumstances.

13. The appeal is, therefore, dismissed. There will, however, be no order as to costs in the circumstances of the case.