(2024) 03 CESTAT CK 0008

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 76011 Of 2015

Banti Roy Choudhury APPELLANT

Vs

Commissioner Of Customs (Preventive) RESPONDENT

Date of Decision : 05-03-2024

Acts Referred:
Customs Act, 1962 — Section 112(b)(ii), 114A

Citation : (2024) 03 CESTAT CK 0008

Hon'ble Judges : Ashok Jindal, Member (J);K. Anpazhakan, Member (T)

Bench : Division Bench

Advocate : Tariq Sulaiman

Final Decision : Allowed

Judgement

K. Anpazhakan, Member (T)

1. The present appeal has been filed against the impugned Order-in-Original No. CCP/NER/12/2015 dated 08.09.2015 passed by the Commissioner of Customs (Preventive), Shillong, wherein the Ld. Commissioner has confirmed the demand of Customs duties amounting to Rs.29,47,625/- along with interest and equal amount of duty as penalty on the Appellant under section 114A of the Customs Act, 1962. He also imposed a penalty of Rs.50,00,000/-on the Appellant under Section 112(b)(ii) of the Customs Act, 1962.

2. The facts of the case are that the Department alleged that the Appellant has imported Portland Pozzolana Cement valued Rs.2,36,46,744/- through Khowaighat LCS, but failed to pay Customs duties amounting to Rs.29,47,625/- during the period 10.05.2010 to 21.02.2012. The allegation has been made based on the evidence that during this period the Appellant has remitted the above said amount to the Exporter's Bank at Bangladesh through his Axis Bank/ IndusInd Bank at Agarthala. The importer failed to produce self-certified import documents such as Copies of Bills of lading, Proforma Invoices, Commercial Invoices, transport documents, packing list, TT/LC/DP evidencing proof of

shipment at Balla LCS, Bangladesh. Accordingly, it was presumed that the importer has imported the said goods without payment of customs duties, by collusion, wilful mis-statement and suppression of facts. Hence, Customs duty has been demanded on the above said money transferred and confirmed vide the impugned order.

3. None appeared for the Appellant. Heard the Ld. Authorized Representative appearing on behalf of the respondent/Revenue. As the issue involved pertains to imports said to have been made in the years 2010-12, in the interests of justice, we decided to take up the appeal for final disposal with the assistance from Ld. Authorized Representative for the Revenue.

4. We observe that the Appellant has not filed any Bills of Entry to clear the goods at the LCS, Khowaighat. The Appellant has not produced any import documents such as Copies of Bills of lading, Proforma Invoices, Commercial Invoices, transport documents, packing list, TT/LC/DP evidencing proof of shipment at Balla LCS, Bangladesh etc. to support the actual import of the goods. The only evidence cited by the Revenue based on which the Customs duty has been demanded is the remittance of the money to the exporter's bank at Bangladesh through the Appellant's Axis Bank/IndusInd Bank at Agarthala. Other than this there is no evidence available on record to establish that actual import of the said goods have taken place.

4.1. We observe that the impugned order has listed out 39 Proforma Invoices issued by the Exporter Premier Cement Mills Ltd, Bangladesh totally having value of Rs.2,36,46,774/-. Revenue has considered these Proforma Invoices as the basis for demanding the Customs duties. There is no Bills of Entry filed for clearance of the goods mentioned in the Proforma Invoices. There is no evidence available on record to show that the goods have actually arrived the Khowaighat LCS. No out of charge has been given on any of the consignments. In the absence of any such evidence of actual import of the goods, it is not known how the Revenue has presumed that import of the said goods have taken place. We observe that Customs duty cannot be demanded from the importer without filing of the Bills of Entry. Accordingly, we hold that the demand cannot be made only on the ground of transfer of money from the Appellant's Bank Account to the Exporter in Bangladesh. The Department could have conducted investigation to find out the purpose for which the money was transferred or they could have transferred the case to the concerned department to investigate on the money laundering angle. Without initiating any such action, demanding customs duty only based on the money transfer to the Exporter's Bank Account is not supported by any evidence. Accordingly, we hold that the demand of customs Duty only based on the evidence of money transfer is not sustainable and hence, we set aside the same.

4.2. Since the demand of customs duty is not sustainable, there is no question of demanding interest or any penalty. Accordingly, we set aside the penalties imposed on the Appellant under Sections 114A and 112(b)(ii) of the Customs

Act, 1962.

5. In view of the above discussions, we set aside the impugned order and allow the appeal filed by the Appellant.

