(2006) 09 KAR CK 0041

In the Karnataka High Court

Case No : CSTA No. 32 of 2005

Big Apple Computers — APPELLANT

Vs

The Commissioner of Customs and The Commissioner of Customs and CE (Appeals) — RESPONDENT

Date of Decision : 08-09-2006

Acts Referred:
Customs Act, 1962 — Section 35 G

Citation : (2006) 112 ECC 167 : (2006) ECR 167 : (2007) 207 ELT 36

Hon'ble Judges : R. Gururajan, J;Jawad Rahim, J

Bench : Division Bench

Advocate : S. Vittal Shetty, for the Appellant; B. Papegowda, CGSC, for the Respondent

Final Decision : Dismissed

Judgement

1. Assessee is before us in this appeal challenging the order dtd. 20-6-2005 passed by the CESTAT, South Zonal Bench, Bangalore.

2. Facts in brief are as under;

Appellant imported 2160 pieces of used computer monitors from WRC International, USA at a price of US $ 4 per piece through Inland Container Depot, Sanath Nagar, Hyderabad-18 and filed bill of entry declaring a total value of import as Rs. 5,04,569/- at Rs. 233.60 per monitor supported by invoice No. 100901-1 dtd. 8-11-2001 of the aforesaid suppliers of goods. The appellant imported the said monitors under the bonafide belief that the second hand computer monitors falls under the definition of capital goods and further are permitted for import freely if they are less than 10 years old, as per the import policy and therefore there was no need for an import licence. However the customs authorities took the view that as per EXIM policy 1997-2002, the second hand goods imported are consumer goods and are restricted items requiring licence for imports. The goods were examined on first appraisement basis and the value of the goods was apprised at Rs. 600/- per monitor and the goods were not released. Since the appellant had to clear the consignment immediately for fulfilling the contractual obligation undertaken and to avoid additional expenses, it requested for adjudication of the matter without issue of show cause notice and to decide the matter by granting personal hearing. Personal hearing was granted on 5-2-2002. The assessee submitted that in the event the goods were to be treated as consumer goods by the department being restricted items requiring a licence under the EXIM policy, a lenient view was prayed to be taken for imposing any fine or penalty in the matter. On 19-3-2002, the Commissioner passed an order imposing redemption fine of Rs. 4,50,000/- and penalty of Rs. 1,50,000/- without stating anything on the value of imported goods which was apprised at Rs. 600 per monitor. Since the goods were urgently required, the assessee cleared the goods by paying in cash under protest redemption fine of Rs. 4,50,000/- and penalty of Rs. 1, 50,000/-. The appellant was asked to pay duty on the enhanced value of monitors at Rs. 600/- per piece. The assessee paid the countervailing duty amounting to Rs. 2,38,464/- out of total amount of duty of Rs. 5,02,019/- in cash. The assessee was allowed to pay the remaining amount by availing the duty entitlement pass book and by availing exemption of Special Additional duty amounting to Rs. 69, 155/-. Aggrieved by the said order assessee filed an appeal before the tribunal. The tribunal has now chosen to reject the appeal. Aggrieved by the said order, appellant is before us.

3. Notice was issued and respondents entered appearance.

4. At the time of admission, respondent contended that the appeal is to be filed at Hyderabad and not at Bangalore on the ground that the appellant is situated in Hyderabad and it comes within the jurisdiction of the Commissioner of Customs, Hyderabad, and that just because the South zonal Bench has decided the matter, assessee cannot file this appeal in this court. He would strongly rely on Bombay Snuff P. Ltd. Vs. Union of India (UOI) and Others, a judgment of the Delhi High Court.

5. On the other hand, learned counsel for the assessee would say that this court is not helpless in considering the case of the assessee. According to him, the matter has been decided by a bench having its Head Quarters at Bangalore and he would therefore say that this court can decide the appeal.

6. After hearing, we have carefully perused the material on record.

7. Appellant is situated in Andhra Pradesh. Original Order was passed by the Commissioner of Customs, Hyderabad. An appeal was filed to the South Zonal Bench, Bangalore. The said bench dismissed the appeal. Let us see as to whether dismissal of the appeal by the South Zonal Bench gives a right to the appellant to maintain an appeal in the case on hand.

8. Customs Act provides for various provisions for the purpose of adjudication of dispute between the parties. Appeals and Revisions are available under Chapter 15 of the Act. An order passed by the Collector - Appeals, is appealable to the

appellate tribunal. It is also open to either Commissioner of Customs or other party aggrieved by any order passed by the appellate tribunal may file an appeal to the High Court. The commissioner or other party can also apply to the High Court to direct the appellate tribunal to refer to the High Court any question of law arising from such order of the tribunal if the tribunal refuses to move an application to the High Court in the matter under the scheme of the Act. In these circumstances, what is clear to us is that an appeal to a High Court is available to a litigant in the event of an adverse order- Which is the High Court is the question in the case on hand. This question has been considered by the Delhi High Court in 2000 (123) ELT 471, wherein it was considering with regard to territorial jurisdiction of the Delhi High Court in the matter of considering the appeal. In the said case the Delhi High Court ruled at para 13 as under;

13. The present case arises out of the State of Bombay. The petitioner may have its factory establishment at Panipat in the State of Haryana but that is irrelevant. The adjudicating authority is at Bombay. Obviously it is bound by the law laid down under the provisions of the Customs Act or any other law as interpreted by the High Court of Bombay. For the purpose of the case at hand, the petitioner must be held bound by the law as applicable and as prevailing in the State of Maharashtra whereat the goods were to be imported and whereat the proceedings under the Act were concluded. In the case at hand, if the CEGAT would have stated the case then the reference would have been made to the High Court of Bombay and in the event of the application for statement of case having been refused it is the High Court of Bombay which the petitioner should have approached for issuing a requisition to the tribunal to state the case.

9. In those circumstances, the Delhi High Court ruled that the objection to its territorial jurisdiction to hear the petition is sustained. However, the petitioner would have the liberty to approach the High Court of Bombay for seeking appropriate relief.

10. This judgment clearly applies to the facts of this case. We also see a subsequent judgment of the Delhi High Court Bombay Snuff P. Ltd. Vs. Union of India (UOI) and Others, . In the said case, the High Court was considering as to whether in terms of Section 35(G)3 of the Customs Act the Delhi High Court could consider the appeal, filed by the assessee. The tribunal in para 6 noticed as under;

6. The only difference in the legal position that existed at the time the above decision was rendered and the position that prevails today is that instead of the law envisaging a reference from the tribunal to the High Court, the law now provides for an appeal from every order passed by the appellate tribunal. That difference does not however affect the reasoning underlying the view taken by this court in regard to its jurisdiction to entertain a petition u/s 35G. If a petition seeking reference u/s 35G was not maintainable in this court, there is no reason why an appeal under the said provision after its amendment can be said to be maintainable. On the reasoning adopted by this amendment can be said to be so

maintainable. On the reasoning adopted by this court in Technological Institute of Textile''s case (supra), an appeal u/s 35G must also be filed only in the High Court who has jurisdiction over the authority from whose order the proceedings have originated. The fact that the main seat of the CESTAT is situated in Delhi or that the appeal was heard and decided at Delhi would not mean that all appeals arising from cases so decided regardless from which State the case has originated can be maintained in this court.

11. After noticing, the Division Bench ruled that the Delhi High Court would have jurisdiction in the case on hand.

12. In the light of these two judgments, we are of the view that in the light of adjudicating authority being situated at Hyderabad and in the light of the cause of action having occurred in Hyderabad, and in the light of the appellant being situated in Hyderabad, we are of the view that this court has no territorial jurisdiction despite the decision by South Zonal Bench having Head Quarters at Bangalore. Hence we deem it proper to accept the preliminary objection raised by the revenue.

13. In the result, the following order is passed:

Appeal stands rejected as not maintainable in this High Court. Liberty is reserved to the assessee to move the Andhra Pradesh High Court in accordance with law. No opinion is expressed on the merits of the matter.