(2015) 08 P&H CK 0226

In the Punjab And Haryana At Chandigarh

Case No : CUSAP No. 1 of 2015 (OandM)

Broadway Overseas Ltd. — APPELLANT

Vs

The Customs Excise & Service Tax Appellate Tribunal and Others — RESPONDENT

Date of Decision : 13-08-2015

Acts Referred:
Customs Act, 1962 — Section 111(d), 112(a), 125, 130

Citation : (2015) 08 P&H CK 0226

Hon'ble Judges : Ajay Kumar Mittal and Ramendra Jain, JJ.

Bench : Division Bench

Advocate : Sudhir Malhotra, Advocate, for the Appellant

Judgement

Ajay Kumar Mittal, J.—This appeal has been preferred by the assessee under Section 130 of the Customs Act, 1962 (in short "the Act") against the order dated 5.8.2014 (Annexure A-5) passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as "the Tribunal) and the consequent orders dated 19.3.2014 (Annexure A-4) passed by the Commissioner (Appeals) and dated 23.11.2012 (Annexure A-3) passed by the assessing authority, claiming the following substantial questions of law:--

"i) Whether goods imported by 100% EOU are regulated by fast track clearances as per para 6.38.1 & 6.38.2 of Handbook of Procedure- Foreign Trade Policy read with CBEC Circular No. 12/2005 Cus Dt. 04.03.2005 or regulated by provisions of licensing note 2 & 4 of ITC (HS) classification of export and import items?

ii) Whether Ld. CESTAT is justified in confirming imposition of redemption fine when penalty waived?

iii) Whether redemption fine imposable when issue relates to interpretation of statutory provisions?

iv) Whether redemption fine can be imposed when there is no malafide on part of appellant?

v) Whether the relief claimed by the appellant deserve to be granted to the appellant or not?

vi) Whether manifest injustice has been done to the appellant or not?

vii) Whether penalty can be imposed arbitrarily under Section 112-A of the Customs Act in the absence of corroboration of evidence?"

2. Briefly stated, the facts necessary for adjudication of the present appeal as narrated therein are that the appellant imported 112.355 MT of Secondary Defective HR Steel Strip, Coils vide invoice dated 20.8.2012 (Annexure A-1) of M/s. Overseas Distributors Inc., USA for the use in manufacture of final products in their factory premises. The assessee filed an application dated 11.10.2012 for procurement and movements of the goods without payment of duty under notification dated 31.3.2003. The Superintendent, Central Excise Range-V, Jalandhar issued certificate dated 16.10.2012 (Annexure A-2) that it was for clearance of goods through ICD/PSEC/GRFL, Ludhiana imported against invoice dated 20.8.2012 (Annexure A-1). The assessing being 100% EOU sought clearance of goods at nil rate under notification dated 31.3.2003 and there was no port restriction under the said notification. The Additional Commissioner of Customs, ICD, GRFL, GT Road, Sahnewal, Ludhiana vide order-in-original dated 23.11.2012 (Annexure A-3) ordered confiscation of the goods under Section 111(d) of the Act and allowed its redemption under Section 125 of the Act on payment of fine of Rs. 3,00,000/- and also imposed penalty of Rs. 1,00,000/- on the appellant under Section 112(a) of the Act. In pursuance thereto, the appellant deposited the redemption fine and penalty vide GAR dated 24.11.2012. Feeling aggrieved, the appellant filed an appeal before the Commissioner (Appeals) who vide order-in-appeal dated 19.3.2014 (Annexure A-4) rejected its appeal. Still dissatisfied, the appellant approached the Tribunal by way of an appeal. The Tribunal vide order dated 5.8.2014 (Annexure A-5) set aside the penalty imposed under Section 112(a) of the Act and reduced the redemption fine to Rs. 1,00,000/-. Hence, the present appeal.

3. Learned counsel for the appellant submitted that the Tribunal had set aside the penalty under Section 112(a) of the Act. Accordingly, the redemption fine which was reduced to Rs. 1,00,000/- could not be sustained.

4. On the other hand, learned counsel for respondent No. 2 supported the orders passed by the authorities.

5. After hearing learned counsel for the parties, we do not find any merit in the contention of learned counsel for the appellant. The Tribunal had recorded that as per the provisions of the licensing notes, the secondary/defective HR Coils could be imported only at the ports of Mumbai, Chennai or Kolkatta. The import of goods at ICD, Ludhiana by the assessee was contrary to the licencing note No. 4 of Chapter 72 of the ITC (HS) as there was restriction about the port at which the goods could be imported and, therefore, the goods had been rightly confiscated. The Tribunal, however, waived off the penalty on the appellant under

Section 112(a) of the Act and reduced the quantum of redemption fine from Rs. 3,00,000/- to Rs. 1,00,000/-. The Tribunal had taken a lenient view and it would not give any substantive right to the appellant to get the redemption fine of Rs. 1,00,000/- set aside on the ground that once penalty has been waived, no redemption fine could be sustained especially when the appellant had violated the provisions of the licencing note.

6. In view of the above, no question of law muchless a substantial question of law arises in this appeal. Consequently, finding no merit in the instant appeal, the same is hereby dismissed.