(2015) 04 P&H CK 0336

In the Punjab And Haryana At Chandigarh

Case No : CUSAP No. 40 of 2014 (O&M)

Commissioner of Central Excise APPELLANT

Vs

P.T. Impex RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Citation : (2015) 321 ELT 38

Hon'ble Judges : S.J. Vazifdar, A.C.J;Gurmeet Singh Sandhawalia, J

Bench : Division Bench

Advocate : Sukhdev Sharma, for the Appellant; Jagmohan Bansal, Advocates for the Respondent

Judgement

S.J. Vazifdar, Actg. C.J.

CM-20526-CII-2014:

1. For the reasons stated in the application, the delay of 11 days in filing the appeal is condoned.

Application stands disposed of.

CUSAP No. 40 of 2014:

This is an appeal against the order of the CESTAT [2014 (302) E.L.T. 154 (Tri.-Del.)] setting aside the orders of the adjudicating authority and the first appellate authority. The CESTAT held that the respondent had entered into a concluded contract before the change in the notification dated 7-4-2006 requiring sandalwood to be imported only against an import licence.

The appellant contends that the following substantial questions of law arise:

"(i) Whether the Tribunal has rightly set aside the O-I-O wherein it was held that the Sandalwood was restricted Item prior to filling the Bill of Entry?

(ii) Whether the Tribunal was right in holding that the agreement was materialized before restricting the import of the sandalwood on 7-4-2006 and the shipment was made within the original validity of an irrevocable letter of credit established before the date of imposition of such restrictions?

(iii) Whether the date of import of Sandal wood to be taken as date of filling of Bill of Entry or the date of Proforma Invoice and Its remittance?

(iv) Whether the Tribunal is right in holding that the Respondent is legally entitled to the benefit of Provisions of Paragraph 1.5 of Chapter 1A of Import-Export Polity 2004-09?

(v) Whether the Tribunal is right in applying the ratio of decided cases viz. Matraco (India) Ltd. v. UOI and Viraj Impex Ltd. v. CCE, Mumbai wherein the contract was made earlier to the shipment/Import?"

2. The only question is whether a concluded contract had been arrived at between the respondent and the foreign supplier prior to 7-4-2006. Prior to 7-4-2006, sandalwood could be imported against an open general licence (OGL). The Tribunal relied upon two vital facts for coming to the conclusion that the respondent had entered into a valid and binding contract for the purchase of sandalwood from their foreign supplier on 30-3-2006 i.e. before the notification dated 7-4-2006. Firstly, an invoice dated 30-3-2006 was issued. Although the document states that it was a proforma invoice, it would make no difference in the facts and circumstances of the case. Admittedly, on 30-3-2006, the appellant paid the supplier a sum of US$ 38,000 in respect of the goods. In fact, due to a short supply, the supplier had refunded an amount of $ 4921. The Tribunal''s conclusion that the facts establish the formation of a contract between the parties on or before 30-3-2006 is justified and in any event cannot be said to be absurd or perverse. In fact, the finding appears to be correct. The appeal does not raise a substantial question of law. The appeal is, therefore, dismissed.

