(2014) 11 MAD CK 0059

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 385 of 2009 and M.P. No. 1 of 2009

Commissioner of Cus. (Imports), Chennai APPELLANT

Vs

Litetronics Vijay India RESPONDENT

Date of Decision : 07-11-2014

Acts Referred:
Customs Act, 1962 — Section 111 111(m) 112(a) 125 125(1)

Citation : (2015) 322 ELT 644

Hon'ble Judges : R. Sudhakar, J;R. Karuppiah, J

Bench : Division Bench

Advocate : Vikram Ramakrishnan, Advocate for the Appellant; S. Murugappan, Advocate for the Respondent;

Judgement

R. Sudhakar, J.

1. This Civil Miscellaneous Appeal filed against the order dated 14-8-2008 made in Final Order No. 876 of 2008 passed by the Customs, Excise and Service Tax Appellate Tribunal [2009 (234) E.L.T. 535 (Tribunal)] was admitted by this Court on the following substantial questions of law:

"(a) Whether the decision of the Tribunal in setting aside the Adjudication order and the penalties levied on the ground that classification is a departmental function even when there was a misdeclaration and a consequent misclassification of goods by the first respondent with the sole intention to evade the payment of Anti Dumping Duty?

(b) Whether the Tribunal was right in holding that there can be no confiscation of goods under Section 112(a) of the Customs Act, 1962 on the grounds of misclassification of goods even when such misclassification of goods was done with a mala fide intention of the first respondent to evade the payment of Anti Dumping Duty?

(c) Whether the decision of the Tribunal by setting aside the penalties levied under Customs Act, 1962 is not perverse as the same is against the material and evidence on record?"

The first respondent/importer imported under Bill of Entry parts of CFL lights and classified them under different heads and attempted to evade payment of anti-dumping duty. Hence, the Department initiated proceedings after verifying all the documents and records filed in support of the imported goods and issued a show cause notice as to why the goods should not be confiscated alleging mis-declaration and misclassification of the goods in terms of Section 111(m) of the Customs Act and penalty under Section 112(a) of the Customs Act be imposed.

2. The case was adjudicated and a finding was rendered by the Original Authority. The Original Authority came to the conclusion that parts of CFL lights were attempted to be imported by giving mis-declaration to avoid payment of anti-dumping duty. Accordingly the Original Authority held as follows:

"10. Accordingly, I find that there has been an evasion of ADD amounting to Rs. 12,10,650/-.

11. I also observe, that due to mis-declaration of description and classification leading to evasion of ADD, the entire consignment of 15,000 Pcs. of CFL in SKD form are liable to confiscation under Section 111(m) of the Customs Act, 1962 and the importer is also liable to penalty under Section 112(a) of the Customs Act, 1962.

12. I also indicate that the importer would be liable for payment of interest under Section 47(2) of the Customs Act, 1962, on the ADD amount of Rs. 12,10,650/- till the discharge of this liability, as the same was not paid in terms of the aforesaid section.

ORDER

(i) I order for re-assessment of the bill of entry No. 886618, dated 5-10-2005 filed by M/s. Litetronics Vijay (I) Pvt. Ltd., under Section 17(4) of the Customs Act, 1962 by (a) imposing ADD in terms of Notfn. 138/2002, dated 7-10-2002 on 15,000 PCS of CFL amounting to Rs. 12,10,650/- (b) collecting interest on (a) above in terms of Section 47(2) of the Customs Act, 1962.

(ii) I order for confiscation of the mis-declared consignment of 15,000 pcs. of CFL in SKD form under Section 111(m) of the Customs Act, 1962. In lieu of confiscation, I allow redemption of the said consignment on payment of a fine of Rs. 2,50,000/- (Rupees two lakhs fifty thousands only) under Section 125(1) of the Customs Act, 1962.

(iii) I impose a penalty of Rs. 50,000/- (Rupees fifty thousands only) on the importer M/s. Litetronics Vijay (I) Pvt. Ltd., Mysore, under Section 112(a) of the Customs Act, 1962.

(iv) I permit clearance on discharge of all the above liabilities, by allowing the adjustment of duty paid Rs. 2,57,621/-."

3. Aggrieved by the order of the Original Authority, the importer filed an appeal before the Commissioner of Customs (Appeals), before whom, the importer made a specific plea, which we extract hereunder as such:

"On 17-2-2006 Shri S. Murugappan, Ms. Prameela Viswanathan, Advocates, Shri G. Radhakrishnan, Vice President and Shri S. Shankar, General Manager appeared for the personal hearing. They have stated that they are only contesting the fine and penalty imposed in this case. The impugned order mentioned that they had mis-declared and misclassified the goods. They pointed out that the goods were as declared in the invoice and it has not been shown that the goods were not as described. Further as regard the classification of the goods, although they had given a suggested classification heading, the work of classifying and assessing the goods is to be done by the Department and the importer cannot be held responsible as per the following judgments:

1. M/s. Northern Plastic Limited Vs. Collector of Customs and Central Excise,

2. Densons Pultretaknik Vs. Commissioner of Central Excise,

3. Natl. Radio & Elecns. Co. v. CCE, Aurangabad [2000 (119) E.L.T. 746 (Tri.)]

4. Teksons Ltd. v. CCE, Mumbai [2000 (118) E.L.T. 657 (Tri.)]

5. Indabrator Ltd. v. CCE, Mumbai [2000 (118) E.L.T. 649 (Tri.)]

6. O-in-A No. C. Cus. 875/2005, dated 13-12-2005 passed by the Comm. (A), Chennai.

I have carefully gone through the facts and circumstances of the case and the submissions made both by the Department as well as the appellant.

Since the appellant themselves restrict their plea to the aspect of fine and penalty, I proceed to decide the issue on those lines. The redemption fine is leviable under Section 125 of the Customs Act, 1962 for redeeming the goods confiscated under Section 111 ibid. Now the question to be decided is whether the impugned goods are confessable or not."

4. The first Appellate Authority came to the conclusion that it is not a straight jacket case of misclassification or erroneous classification, but it is with an intention to evade payment of anti-dumping duty and held as follows:

"From the above it is clear that there was some intentional violation of provisions of law for which the goods are liable for confiscation. Goods on which an anti-dumping duty has been imposed because they harm domestic industry cannot be treated lightly. Incomplete description and misleading suggestion of classification have to be viewed with seriousness. Once the goods are liable for confiscation the penalty under Section 112(a) of the Customs Act, 1962 is leviable and to redeem the goods option under Section 125 of the Customs Act, 1962 on payment of fine has to be given. Considering the amount of duty sought to be evaded by the appellant, the fine and penalty imposed appeared to be reasonable. The case laws cited by the appellant are distinguished by the above-discussed facts and they are not squarely applicable in this case, in which chicanery is involved.

In view of the above discussion and facts and legal position stated therein, the lower authority''s order is upheld. Thus appeal fails and is rejected."

5. Aggrieved by the order of the First Appellate Authority, the importer filed an appeal before the Tribunal. The Tribunal, by a brief order came to the conclusion that the assessee had paid the admitted anti-dumping duty, redemption fine of Rs. 2.5 lakhs and the only issue was penalty of Rs. 50,000/-. According to the Tribunal, there is no dispute on the classification made by the Department under Chapter CTH 8539 31 10 and therefore, the order of the Original Authority on classification stands sustained in terms of Section 111(m) of the Customs Act. Insofar as imposition of penalty is concerned, the Tribunal was of the view that the classification is departmental function and it is open to the importer to classify the goods in any manner that he may choose and it is for the Department to fix the correct classification and determine duty. Therefore, relying on an earlier decision of the Tribunal reported in 2007 (215) E.L.T. 71 (Tri.-Chennai) (Raj Television Network v. Commissioner of Customs, Chennai) the Tribunal set aside the confiscation ordered by the lower authorities and consequently, the penalty was vacated.

6. Challenging the order of the Tribunal, the Department has filed this appeal before this Court.

7. We have heard Mr. Vikram Ramakrishnan, learned Standing Counsel appearing for the Department and Mr. S. Murugappan, learned counsel appearing for the first respondent/importer and perused the materials placed before this Court.

8. From a reading of the order of the Tribunal, it is seen that the Tribunal proceeds on the presumption that it is not a case of misclassification, whereas, the importer himself had accepted before the Commissioner (Appeals) that they are not pursuing the matter insofar as the finding on mis-declaration and misclassification. Therefore, the Tribunal misdirected itself to hold that there is no case of misclassification of the goods. Furthermore, the question of redemption fine and penalty would arise only after paying the anti-dumping duty as are to be imposed by the Department accepting that the goods were imported as parts. Admittedly the importer had paid anti-dumping duty with redemption fine. The plea apparently is only redemption fine and penalty to be set aside. In such circumstances, the Tribunal was not correct in coming to the conclusion that there is no case for mis-declaration or misclassification. On facts, it is found that it is a case of mis-declaration and duty has been admittedly paid by the importer and redemption fine also paid; hence, penalty is imposable. If the goods are liable for confiscation under Section 111(m) of the Customs Act, the consequence by way of redemption fine and penalty can be imposed and the Authorities have duly considered the improper import and levied reasonable

redemption fine and penalty. We find such a course to be justified in the facts of the present case. The reasoning of the Tribunal that penalty should be set aside on the premise there is no mis-declaration or misclassification is no case of the importer. Hence, the penalty imposed is correct. The Tribunal is in error. We, therefore, restore the order of the lower authority. In the result, the appeal is allowed and the order passed by the Tribunal is set aside. The questions of law are answered in favour of the department. No costs. Consequently, M.P. No. 1 of 2009 is closed.

