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(2014) 11 MAD CK 0064

In the Madras High Court

Case No : C.M.A. No. 3763 of 2008

Commissioner of Customs (AIR) APPELLANT

Vs

Aravind Fashions Ltd. RESPONDENT

Date of Decision : 21-11-2014

Acts Referred:

Citation : (2015) 321 ELT 662

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

Bench : Division Bench

Advocate : P. Mahadevan, Central Govt. Standing Counsel, Advocate for the Appellant; G. Balasubramanian, Advocate for the Respondent;

Judgement

R. Sudhakar, J.

1. This appeal is filed by the Department challenging the Final Order No. 851 of 2007, dated 12-7-2007 [2007 (217) E.L.T. 453 (Tribunal)] , passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Chennai, by raising the following questions of law:

(a) Whether the Tribunal is right in holding that the benefit of the exemption Notification No. 29/1999 can be extended to the imported goods, even if it is used in the goods which are sold in domestic market instead of using them in the export goods?

(b) Whether the finding of the Tribunal is not against the object and purpose of exemption notifications, which are meant for bona fide exporters only?

(c) Whether the exemption notification given to bona fide exporters can be availed by the consignee for using the same in the goods sold in domestic markets?

We are surprised to note that neither in the show cause notice nor in the orders passed by the Commissioner of Customs (Airport), who adjudicated the case, and the Tribunal, which decided the appeal in favour of the first respondent, the relevant portions of Notification Nos. 20/1999, 11/1997 and 23/1998 are extracted, so as to consider the scope of the said notifications.

2. We find that in this case, the first respondent imported a consignment of leather labels valued at Rs. 13,93,800/- under Bill of Entry No. 120836, dated 2-3-1999 and claimed benefit of Notification No. 20/1999, under which labels, stickers, etc., imported by bona fide exporters are exempted from payment of the whole of basic Customs duty and additional duty of Customs. The department, however, was of the view that the first respondent diverted the imported labels to domestic market and accordingly, a show cause notice was issued proposing to recover the exemption availed. In the adjudication, the Commissioner found that the first respondent had made false claim that they are bona fide exporter for availing the benefit of exemption and accordingly, duty was demanded, apart from imposing penalty and interest.

3. Aggrieved by the said order, the first respondent went on appeal to the Tribunal. The Tribunal held that the adjudicating authority has not rendered a finding that the first respondent was not an exporter and accordingly, set aside the order passed by the Commissioner holding that denial of exemption benefit as per the notifications and imposing penal liabilities on the first respondent is not sustainable. The Tribunal also observed that the notifications do not specify any condition regarding volume of exports required to be made by a person to qualify as bona fide exporter.

4. On a bare perusal of the orders passed by the adjudicating authority and the Tribunal, we find contradiction between the finding rendered by the adjudicating authority in paragraph (7) of its order and the Tribunal in paragraph (5) of the order. The statements given by persons concerned are also adverse to the extent that there was an intention on the part of the first respondent to use the imported goods primarily for local sales.

5. In view of the contradiction between the findings of the adjudicating authority and the Tribunal, we do not think it fit to answer the questions of law, except remanding the matter to the Tribunal to consider the claim of the first respondent in the light of the findings of the Commissioner and the statements recorded from the persons concerned in relation to the import. That apart, we find the reasoning of the Tribunal that there is no finding by the adjudicating authority that the first respondent was not an exporter is clearly an error apparent on the face of the records. For the foregoing reasons, this appeal is allowed by way of remand to the Tribunal. The order passed by the Tribunal is set aside. In view of the remand order passed by us, we do not propose to answer the questions of law raised in this appeal. No costs.

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