(2017) 11 DEL CK 0780

In the Delhi High Court

Case No : Custom Act Appeal No. 60 Of 2017

Commissioner Of Customs APPELLANT

Vs

Emd Locomotive Technologies Pvt Ltd. RESPONDENT

Date of Decision : 01-11-2017

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

Citation : (2017) 11 DEL CK 0780

Hon'ble Judges : Sanjiv Khanna, J;Prathiba M. Singh, J

Bench : Division Bench

Advocate : Aditya Singla, Mohit Pandey, Arvind Datar, Sanjeev Sachdeva, Neha Gulati, Kanika Jain, Vrinda Bagaria

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J

1. The Commissioner of Customs, in these Appeals, has impugned order dated 27th March, 2017 passed by the Principal Bench, Customs Excise and Service Tax Appellate Tribunal.

2. The impugned order dismisses the application filed by the appellant for condonation of delay of 749 days in filing of the appeal against order dated 26th August, 2014 passed by the Commissioner (Appeals).

3. Having heard counsel for the appellant, we are not inclined to issue notice in the present appeal for we find that the Tribunal has given cogent and good reasons as to why delay of 749 days should not be condoned.

4. The respondents are importers of Traction Control Cabinet (TCC, for short). Disputes arose as to whether TCC imported vide Bill of Entry dated 26.07.2013 was classifiable under the heading

"8537" which covers Boards, panels, consoles, desks, cabinets and other bases equipped with two or more apparatus of heading "8535" or "8536", for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90 and numerical control apparatus other than switching apparatus of heading "8517". The case of the respondent/assessee was that the product, traction control cabinet, was covered by the said entry/heading.

5. The stand of the Revenue, on the other hand, was that the aforesaid product was classifiable under the heading "85044010" which covers electrical transformers, static converters (for example rectifiers) and inductors.

6. The order in original dated 12.09.2013 passed by the Additional Commissioner of Customs rejected the stand of the respondent/assessee and had classified TCC under the heading "85044010" instead of "85371000" as claimed by the respondent/assessee. The direction for confiscation of imported goods valued at Rs.12,96,38,282.39 under Section 111(m) of the Customs Act, 1962,giving an option to the respondent/assessee to redeem the goods on payment of fine of Rs.7,50,000/- under Section 125 of the aforesaid Act was issued. Penalty of Rs.2,50,000/- was also imposed on the respondent/assessee.

7. The respondent/assessee preferred first appeal which was dismissed vide order dated 22.08.2014.

8. The respondent/assessee thereafter did not prefer any appeal and the order dated 22.08.2014 became final. In other words, the respondent/ assessee has accepted the classification made by the order in original dated 12.09.2013 that the imported goods, i.e. TCC were classifiable or covered under the heading "85044010" and not under the heading "85371000" as was their case.

8. We do not, under these circumstances, understand the need and necessity for the appellant/Revenue to have filed an appeal before the Tribunal as the stance of the appellant in the order in original was accepted by the first appellate authority. It is obvious that the appellant would not be a person aggrieved.

9. It is the case of the appellant/Revenue that in 2016, investigation was made by Directorate of Revenue Intelligence, Mumbai Zonal Unit on the basis of information received. Consequently, they believe that TCC are covered under the heading "8537", i.e. the heading/classification relied on by the respondent/ assessee themselves. As noticed above, the said claim of the respondent/ assessee was rejected and not accepted by the appellant/Revenue, in respect of the Bill of Entry in question.

10. The tribunal in the impugned order has noticed the subsequent change in the import duty, vide exemption which was granted to goods classified under the heading "85044010". Consequently, the import duty payable on the goods falling under the heading "85044010" became lower than the duty payable under the heading "85371000". That obviously cannot be a reason for the appellant/ Revenue to go back on its earlier stand in the present case.

11. The Commissioner (Appeals) has affirmed the order passed by the Additional Commissioner. We fail to understand as to how the appellant can be aggrieved

and prefer an appeal, when their stand and stance stands affirmed in appeal. In the aforesaid circumstances, we do not think that any ground or reason for condonation of delay is made out.

12. However, we will only clarify that the impugned order and the present order would not be construed as an order which would constrain or bind the Revenue from taking a stand that TCC, i.e., "traction control cabinets" are classifiable under the heading "8537" in any other case relating to a separate Bill of Entry, if permissible in law. We also clarify that in case the appellant/revenue takes this stand, it will be open to the assessee/importer to contest the said position.

With the aforesaid observations, the appeal is dismissed.