(2014) 07 KAR CK 0106

In the Karnataka High Court

Case No : C.S.T.A. No. 18 of 2009

Commissioner of Customs APPELLANT

Vs

Shilpa Trading Company RESPONDENT

Date of Decision : 16-07-2014

Acts Referred:

Citation : (2014) 309 ELT 641

Hon'ble Judges : N. Kumar, J;B. Manohar, J

Bench : Division Bench

Advocate : Jeevan J. Neeralgi, Advocate for the Appellant

Judgement

N. Kumar, J.—The Revenue is before this Court against the order passed by the Tribunal [2008 (224) E.L.T. 453 (Tri.-Bang.)] holding that no redemption fine is imposable when the bond and the bank guarantee executed by the assessee has already been cancelled. The assessee-Importer admitted that there was an undervaluation to the extent of 60% to 62% and that he has used invoices of his brother firm to under-invoice the goods. He admitted that the price list which was relied on by the Revenue was the actual value of the goods. In view of the aforesaid admissions, the assessing authority upheld the charge of the Department pertaining to the undervaluation. The assessee has admitted the liability and also deposited an amount of Rs. 10.00 lakhs towards duty and interest. Thereafter, the order came to be passed levying duty, interest and penalty. Aggrieved by the said order, both the Revenue and the assessee preferred an appeal. The appeal preferred by the assessee was dismissed and the appeal preferred by the Revenue was allowed on the ground that the authority should have passed an order imposing redemption fine when the goods were confiscated and accordingly, the matter was remanded by the authorities.

2. After issuing notice to the assessee and after considering his objections and taking note of the various judgments on which reliance is placed, the authority held, as admittedly there was a violation of the provisions of the Act, the goods imported are liable to be confiscated as the goods were released on the assessee

executing a bond as well as executing a bank guarantee. Therefore, imposed the redemption fine in lieu of confiscation. Aggrieved by the said order, the assessee preferred an appeal before the Tribunal. The Tribunal was of the view that the bond and the bank guarantee executed in favour of the Revenue expired and the goods were not in the possession of the Authorities. In those circumstances, the judgment of the Apex Court in the case of M/s. Weston Components Ltd. Vs. Commissioner of Customs, New Delhi, is not applicable and therefore, set aside the imposition of redemption fine. Aggrieved by the said order, the Revenue is in appeal.

3. Though notice was served on the respondent-assessee, he has not chosen to appear before this Court. The Apex Court in the case of M/s. Weston Components Ltd. Vs. Commissioner of Customs, New Delhi, has held as under: "It is contended by the learned Counsel for the appellant that redemption fine could not be imposed because the goods were no longer in the custody of the respondent-authority. It is an admitted fact that the goods were released to the appellant on an application made by it and on the appellant executing a bond. Under these circumstances if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed, would not take away the power of the customs authorities to levy redemption fine."

From the reading of the aforesaid order, it is clear that when goods are liable for confiscation, and confiscated and released to the assessee on his executing a bond or bank guarantee, the proceedings are concluded holding that if there is a violation of the provisions of the Act, then the order of confiscation has to follow as a matter of course. As the goods are already released in favour of the assessee instead of again taking possession of the confiscated goods, the law provides for payment of fine in lieu of confiscation which is popularly known as redemption fine. Therefore, whether the bond executed by the assessee is in force; whether the bank guarantee executed for due compliance of the bond is in force or not; whether goods are in possession of the authority or not; whether the goods in existence or not on the day when order was passed is totally irrelevant. The question for consideration is whether the assessee has contravened the law and the goods are liable for confiscation? Once, that finding is recorded in lieu of confiscation of the goods and option is given to the assessee to pay confiscation fine i.e., redemption fine to retain the goods. In that view of the matter, the finding recorded by the Tribunal relying on its earlier judgment is erroneous, runs counter to the judgment and law laid down by the Apex Court in the case of M/s. Weston Components Ltd. Vs. Commissioner of Customs, New Delhi, , as such impugned order cannot be sustained. Accordingly, we pass the following: ORDER

(i) Appeal is allowed.

(ii) Impugned order passed by the Tribunal is set aside. Order passed by the original authority is restored.

(iii) Parties to bear their own costs.

