(2010) 02 MAD CK 0155

In the Madras High Court

Case No : C.M.A. (MD) No''s. 81-82 of 2010 and M.P. (MD) No. 1 of 2010

Commissioner of Customs APPELLANT

Vs

Thiru Arooran Sugars Ltd. RESPONDENT

Date of Decision : 10-02-2010

Acts Referred:
Customs Act, 1962 — Section 149, 154, 30, 41

Citation : (2010) 254 ELT 45

Hon'ble Judges : Prabha Sridevan, J;B. Rajendran, J

Bench : Division Bench

Advocate : B. Vijay Karthikeyan, for the Appellant; K.S. Venkatagiri, for the Respondent

Final Decision : Allowed

Judgement

Prabha Sridevan, J.—The appellants import raw sugar for conversion into white sugar under DEEC Scheme, through Tuticorin Port. In the

Bill of Entries for importing raw sugar/CVD has been shown as 16% as per Tariff Heading 1701.90. The bill of entries were in the year 2004. In

the year 2006, they gave a letter to the appellant referring to Chapter Note 2 to Chapter 17 of the Central Excise Tariff, 1985 that the import of

raw sugar satisfy the above criteria and therefore, CVD would be only Rs. 85/- per quintal or Rs. 850/- per Metric Ton. Therefore, they

requested that a correction may be made in all the above Bill of Entries with the Central Excise Classification for CVD/Additional duty as 170139,

and Rs. 85/- per Quintal or Rs. 850/- per Metric Ton of Raw Sugar for Additional Duty/CVD instead of 16% and in this context, they invited

attention to Section 149 of the Customs Act, under which an amendment in the Bill of Entry or Shipping Bill is authorized, even after the import of goods have been cleared on the basis of the documentary evidence which was in existence at the time of clearance of goods.

2. This was rejected on the ground that the amendment may lead to re-quantification of foregone amount, which will amount to re-assessment and

no amendment is possible. Against, that, appeals, had been filed and they had been dismissed on the ground that the decision, of the original

authority did not warrant any interference. The appellate authority had relied on the following decisions:

(a) 1997 (69) ECR 532 ;

(b) 2003 (156) ELT 977 ; and

(c) 2001 (96) ECR 422 .

3. Thereafter, the respondents went to Customs, Excise and Service Tex Appellate Tribunal (hereinafter referred to as the ""Appellate Tribunal"").

The appellants therein had claimed that the amendment to the Bills of Entry could be allowed with reference to the Central Excise Tariff and the

documents that were in existence at the time of assessment of the impugned Bills of Entry. The Appellate Tribunal, while allowing the appeal, had

held that the original authority declined the permission sought to make the amendment solely on the ground that the same would entail re-

quantification of the duty leading to a lower amount of duty foregone and that this is not a valid ground to deny an importer a facility provided in the

Act. Against that, these two appeals have been filed.

4. These appeals are now admitted on the following substantial question of law:

(a) Whether the Tribunal was correct in sustaining the appeal on a ground that was not considered in the impugned order?

(b) Whether the Tribunal can exercise the discretion of the proper officer u/s 149 of the Customs Act, 1962, especially when the proper officer

has had no opportunity to exercise the same?

5. The learned Counsel appearing for the appellant submitted that the present question does not fall u/s 149 of the Customs Act, 1962 (hereinafter

referred to as ""the Act"") and therefore, Appellate Tribunal''s order has to be set aside and he also relied on the decision of the Hon''ble Supreme

Court reported in Priya Blue Industries Ltd. Vs. Commissioner of Customs (Preventive), , wherein it was held that the decision on the refund claim would result in re-assessment and so long as the order of assessment stands, the refund claim cannot be maintained. The learned Counsel

submitted that some reasoning applies to these cases. He also referred to the decisions reported in 1997 (69) ECR 532 and 2004 (116) ECR 478

, which are already cited in the Appellate Tribunal''s order.

6. The learned Counsel appearing for the respondents submitted that the Bill of Entries would show that the duty payable was nil before the

amendment and even after the amendment, the duty will be nil and therefore, the question of re-assessment or re-quantification will not arise.

According to the learned Counsel, the assessing authority was bound to accept the request for amendment of Bill of Entry.

7. Section 149 of the Customs Act reads as follows:

149. Amendment of documents.- Save as otherwise provided in Sections 30 and 41, the proper officer may, in his discretion, authorise any

document, after it has been presented in the custom house to be amended:

Provided that no amendment of a bill of entry or shipping bill or bill of export shall be so authorised to be amended after the imported goods have

been cleared for home consumption or deposited in a warehouse, or the export goods have been exported, except on the basis of documentary

evidence which was in existence at the time of goods were cleared, deposited or exported, as the case may be.

8. The section clearly provides for specific condition subject to which alone the amendment of documents can be authorised by the appropriate

officer; in his discretion, after the import goods have been cleared for home consumption. In the instant cases, there was no dispute that the goods

had been cleared and therefore, unless the other condition is satisfied, Section 149 of the Customs Act, 1962 cannot be applied. The Appellate

Tribunal, while commenting about the original authority rejecting the amendment on the ground that the same would entail re-quantification of the

duty, has not given reasons as to how it cannot be applicable.

9. When we asked the learned Counsel for the respondents whether Section 149 of the Act can be invoked in these cases, he referred to a

decision reported in Union of India (UOI) Vs. Aluminium Industries Ltd., , where the Division Bench of the Kerala High Court held that

rectification can also be made u/s 154 of the Act. According to the respondents, this is purely a clerical and arithmetic error. If so, they could not

have made the application-under Section 149.

10. The decision of the Appellate Tribunal is devoid of reason. The impugned order does not indicate why in the present facts and circumstances,

the officer ought to have exercised his discretion u/s 149. The above substantial questions of law are answered accordingly. The appeals are

allowed. Consequently, connected miscellaneous petitions are closed. No order as to costs.

11. The learned Counsel appearing for the respondents submitted that they may be permitted to apply to the authorities concerned for rectification

of clerical and arithmetic error u/s 154 of the Customs Act, 1962. No leave is necessary for that, if they are entitled in law to file such an

application. If the respondents file such an application, it shall be dealt by the appellant in accordance with law.

