(2011) 08 KAR CK 0155

In the Karnataka High Court

Case No : CSTA. No. 31 of 2006

Commissioner of Customs, Bangalore — APPELLANT

Vs

S.D. Mookerjea — RESPONDENT

Date of Decision : 04-08-2011

Acts Referred:
Customs Act, 1962 — Section 111 (0), 28 (1)

Citation : (2012) 190 ECR 15 : (2011) 274 ELT 31

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : Jeevan J. Neeralgi, for the Appellant; S.D. Mookerjea, Chief Finance Executive, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—The revenue has preferred this appeal challenging the order passed by the Tribunal, which has set aside the penalty imposed on the assessee.

2. The assessee imported goods on free of customs duty under the Advance Licensing Scheme in terms of Notification No. 30/1997, dated 1-4-1997. The duty foregone by the revenue is Rs. 81,84,758/-. An export obligation is cast on the appellant in terms of the Advance Licence obtained under the above said notification. The validity period of the licence was 20-10-2000. The assessee could not fulfill the export obligation amounting to Rs. 5,21,33,991/- within the time. Now it is not in dispute that belatedly the entire export obligation has been complied with. The proceedings were initiated against the assessee by issuing a show cause notice as the export obligation has not been complied with within the period stipulated. The Adjudicating Authority held the assessee is not entitled to the benefit of exemption. The goods valued at Rs. 6,11,767.55/- were confiscated u/s 111(o) of the Customs Act, 1962 with an option to redeem the same on payment of fine of Rs. 60,000/-. The duty foregone on the imported goods amounting to Rs. 61,84,758/- was demanded u/s 28(1) of the Act with interest and penalty was also imposed. Aggrieved by the same, the assessee

preferred an appeal to the Tribunal. The Tribunal held due to the recession in the industry and also labour problem, the assessee was not in a position to fulfil the export obligation in time.

3. In terms of the Public Notice dated 7-11-2002, the assessee was entitled to seek extension of export obligation period of six months from the date of Public Notice for fulfilment of certain conditions. In any case even by 11-12-2001, the assessee had more than fulfilled the export obligation. These factors have not been taken into consideration by the Adjudicating Authority. The Adjudicating Authority has strictly gone by the letter of law and demanded the entire duty foregone and further imposed penalty. Therefore, the Tribunal was of the view that as the entire export obligation has been complied with even though belatedly and the assessee has not preferred any appeal against the order confiscating the detained goods, this is the case where imposition of duty, fine and penalty is uncalled for. Therefore, it set aside the said order.

4. We have heard the learned Counsel appearing for the appellant.

5. In the facts of the case, we are satisfied that the approach of the Tribunal is just and proper. The assessee has fulfilled the export obligation though belatedly. He has not preferred any appeal against the order of confiscating goods. In fact by a paper publication, an opportunity was given to such assessee who has not complied with the export obligation within the time stipulated to seek for extension. If he had sought for extension, the entire proceedings would have been unnecessary. The Tribunal taking into consideration the entire aspect rightly interfered with the order of the Adjudicating Authority. We do not see any justification to interfere with the order of the Tribunal as no substantial question of law arises for consideration in this appeal. The appeal is dismissed.