(2014) 03 BOM CK 0036

In the Bombay High Court

Case No : Customs Appeal No. 94 of 2012

Commissioner of Customs (Export) APPELLANT

Vs

Indo Zinc Ltd. RESPONDENT

Date of Decision : 21-03-2014

Acts Referred:
Customs Act, 1962 — Section 18, 18(2)(a), 18(4)

Citation : (2014) 306 ELT 601

Hon'ble Judges : S.C. Dharmadhikari, J;G.S. Kulkarni, J

Bench : Division Bench

Advocate : Pradeep S. Jetly, Advocate for the Appellant; V. Sridharan, Senior Counsel and Ramesh Nair i/by. V.P. Sawant, Advocate for the Respondent

Judgement

1. This appeal challenges the concurrent orders and directions of the Commissioner of Customs (Appeals), dated 28th May, 2009 and of the Tribunal dated 21st February, 2012 on the point of awarding of interest u/s 18(4) of the Customs Act, 1962. Mr. Jetty appearing on behalf of the revenue submits that this appeal raises substantial questions of law, particularly, in the light of the direction of the Tribunal to make payment of interest with effect from 13th February, 1997. He submits that the Tribunal has ignored the date of provisional assessment and finalization thereof on 22nd August, 2003. Thus the refund was sanctioned on 11th November, 2003 after the Tribunal''s order of 22nd November, 2001. A complete application for refund was received only on 25th September, 2003. Therefore, the direction to pay interest from the date of expiry of three months of the order of the Commissioner of Customs dated 14th February, 1996 is contrary to sub-section (4) of Section 18 of the Customs Act, 1962.

2. We are unable to agree. The respondent assessee purchased transferable Value Based Advance License in the year 1994. In the month of December, 1994, the assessee imported 52 containers of Copper Wire Bars and proceeded to file several Bills of Entry for clearance of the goods seeking duty free clearance under

the Value Based Advance License scheme. The goods were assessed duty free under the said scheme on 28th February, 1995. Out of 52 containers, 43 were cleared by the Customs on 6th and 7th March, 1995, whereas the balance 9 containers were tendered for verification. After due intervention by this Court, the goods were cleared provisionally on payment of duty on 5th December, 1995. A letter of protest was also given by the appellant assessee.

3. In the meanwhile, the Directorate of Revenue Intelligence issued a show cause notice dated 7th April, 1995 proposing recovery of duty, fine and penalty. The show cause notice was adjudicated inter alia by a common order dated 14th November, 1996. The impugned show cause notices were withdrawn. The assessee therefore addressed a letter dated 9th December, 1999 to the Chief Commissioner of Customs requesting for refund of duly amounting to Rs. 1,21,93,397/-. Similar letter was addressed to the Commissioned of Customs, Nhava Sheva Customs House. All this was in the light of the order dated 14th November, 1996 passed by the Commissioner of Customs (Import), Mumbai, withdrawing the show cause notices. The correspondence followed. However, the department not accepting the dropping of the show cause notices, challenged the order before the Appellate Tribunal. That Tribunal vide its order dated 27th September, 2001 found no infirmity in the dropping of the show cause notices and rejected the appeal of the department. Thereafter another letter was addressed by the assessee for refund of the amount of duty. The order of refund was sanctioned for Rs. 1,11,03,479/- on 8th October, 2003 and the same was paid by cheque dated 11th November, 2003. Thus, from 1996 to 2001 and even thereafter the refund was not made nor is the Revenue''s case is that it sanctioned and offered to disburse it. The monies legitimately due were thus withheld from 1996 and at least from 2001.

4. It is in these circumstances and which, in our opinion, cannot be ignored that the concurrent directions to pay interest appear to be wholly justified. This is not a case where the department could rely as the matter was dragged by it. It filed an appeal against the order of the Commissioner of Customs and urged that the final rejection of the appeal on 27th September, 2001 or at best the date on which the refund was sanctioned could be reckoned for the purposes of the liability to pay interest. The Tribunal, in the given facts and circumstances, was right in holding that the liability accrued from the expiry of the period of three months from the order dated 14th November, 1996 withdrawing the show cause notices. It is that date which the Tribunal took into consideration and equally the authority lower to it for the purposes of sub-section (4) of Section 18 of the Customs Act, 1962. It also, and in our opinion, rightly held that for the purposes of Section 18(2)(a) it is the order of the Commissioner of Customs which finally assesses the duty leviable on the goods in question. In these circumstances, any wider or larger controversy does not arise for our consideration. The facts based on which the direction was issued would justify the same. The appeal does not raise any substantial question of law. It is accordingly dismissed.

5. We are also not impressed by the submission of Mr. Jetly that in the present case the Tribunal erred in modifying the direction of the Commissioner of Customs. (Appeals) dated 28th May, 2009. It is submitted that, during the pendency of the proceedings, the Directorate General of foreign Trade had revoked the license and the revocation was of 28th September, 1995, whereas its restoration was of 7th November, 1998. Therefore, the three months'' period should be reckoned from 7th February, 1999 and not from three months from the date of the order of the Commissioner. We are of the opinion that, in this case the show cause notice dated 7th April, 1995 proposing recovery of duty, imposition of fine and penalty under the provisions of the Customs Act, 1962 as also another show cause notices dated 9th May, 1995 on the same allegations, were adjudicated and withdrawn on 14th November, 1996. It is the department''s stand throughout that this does not constitute a final assessment within the meaning of sub-section (2) of Section 18 because it was challenged and the challenge raised by the department was rejected by the final order of the Tribunal on 27th September, 2001. Therefore, we do not see any reason as to how any assistance can be derived from the proceedings and which are in any event of 1995-1997 and before the Directorate General of Foreign Trade. Since the payment of interest was withheld till 8th October, 2003 and released only on 11th November, 2003, we find that even otherwise the direction to pay interest cannot be faulted and the Tribunal was in no error of modifying the order of the Customs (Appeals) in the given facts and circumstances. This additional submission also therefore does not raise any substantial question of law. The appeal is therefore dismissed.

