(2010) 07 MAD CK 0030

In the Madras High Court

Case No : C.M.A. No. 344 of 2009

Commissioner of Customs (Exports) APPELLANT

Vs

BPL Ltd. RESPONDENT

Date of Decision : 22-07-2010

Acts Referred:
Customs Act, 1962 — Section 27, 28C

Citation : (2010) 259 ELT 526 : (2013) 18 GSTR 400

Hon'ble Judges : M.M. Sundresh, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : K. Ravi Anantha Padmanabhan and C.G.S.C, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

M.M. Sundresh, J.—The appeal has been filed by the revenue challenging the order passed by the Tribunal in CESTAT Final Order

253/2005 dated 11-6-2007 whereby the order passed by the commissioner confirming the Order-in-Original was reversed.

2. The revenue has filed the appeal by raising the following substantial question of law:

Whether Chartered Accountant''s Certificate alone can be accepted as an evidence to rule out unjust enrichment without any corroborative

evidences such as balance sheet, ledger accounts, sales invoices prior to after import etc. or not?

3. The first Respondent filed an application seeking refund of claim on 30-12-1998. The said application was rejected by the Assistant

Commissioner of Customs on the ground that there is no material on record to show that the first Respondent has absorbed the amount of refund claimed by him. The first Respondent was also asked to produce relevant documents in support of its claim. Since the first Respondent has failed

to produce relevant documents, the claim was rejected. Aggrieved by the said order of rejection, the first Respondent filed an appeal before the

Commissioner of Appeals. The Commissioner of Appeals in turn has allowed the appeal in part by setting aside the Order-in-Original for the

refund, subject to the test of unjust enrichment. Pursuant to the order passed by the Commissioner of Appeals, the first Respondent made a

request for refund for an amount of Rs. 1,15,827/-. The said request was rejected on 25-6-2004. The first Respondent again filed an appeal

challenging the said order which was also dismissed. The first Respondent filed a further appeal before the Tribunal which was allowed in part

based upon the certificate issued by the Chartered Accountant. Hence, the revenue has come on an appeal challenging the order passed by the

Tribunal.

4. Heard Mr. Ravi Anantha Padmanabhan, Senior Central Government Standing Counsel appearing for the Appellant and though notice was

served, none appeared for the first Respondent.

5. Learned Counsel for the Appellant submitted that in spite of the opportunity provided by the authorities, the Respondent has not produced any

evidence in support of the claim except relying upon the certificate issued by the Chartered Accountant. Learned Counsel further submits that a

conjoint reading of Section 27 and Section 28C and 28D of the Customs Act, 1962 shows that the onus is on the importer seeking refund to

satisfy the authorities with required documents while seeking refund of the excess amount paid. Therefore, the learned Counsel submits that the

appeal will have to be allowed since the Tribunal has committed an error in merely relying upon the Chartered Accountant''s certificate.

6. We find considerable force in the submissions made by the learned Counsel for the Appellant.

7. Section 27 of the Customs Act 1962 provides for the claim for refund of duty. A perusal of the said provision would show that the importer will

have to satisfy the authorities while seeking such a claim. In other words, until and unless the importer satisfies the authorities with relevant

documents, indicating the fact that it has paid the excess amount and the duty has not been passed on to the customers, such a claim cannot be

accepted. Further Section 28C and 28D of the Act provide for price of goods to indicate the amount of duty paid thereon and presumption that

incidence of duty has been passed on to the buyer. Therefore, until the contrary is proved, there is a presumption provided under the statute that

the duty has been passed on to the buyer. The above said provisions would clearly establish the fact that it is for the importer to satisfy the

authorities that the duty has not been passed on to the buyer and the excess payment had been made by him by absorbing the same.

8. In the present case on hand, admittedly, the first Respondent has not produced any document other than the certificate issued by the Chartered

Accountant to substantiate its case. The certificate issued by the Chartered Accountant is merely a piece of evidence acknowledging certain facts.

The authorities cannot merely act upon the certificate. If such an interpretation is given, then there is no need for authorities to decide the issue of

refund. In other words, the certificate issued by the Chartered Accountant would prevail over the consideration of the issues before the authorities.

Such a situation has not been contemplated under the Act. Further, Section 27 mandates on the importer to produce such documents or other

evidence while seeking refund to establish that the amount of duty in relation to which such refund is claimed, has not been passed on by him to any

other person.

9. Therefore, considering the above said provisions and applying the same to the facts on hand, we are of the opinion that the Tribunal has

committed an error in merely relying upon the certificate produced by the first Respondent without taking into consideration of the fact that no

evidence has been produced for considering the claim of refund. The Tribunal also relied upon the judgment of Commissioner of C. Ex.,

Coimbatore v. Flow Tech Power reported in 2006 (202) E.L.T. 404 (Mad). The said judgment is not applicable to the present case on hand and

the Tribunal has wrongly relied upon the said Judgment. This Court in the said judgment has clearly held that the certificate issued by the Chartered

Accountant along with other evidence such as Profit and Loss Account are sufficient evidence to consider the claim for refund. The said judgment

cannot be construed to lay down the proposition of law that the certificate issued by the Chartered Account would automatically enable the person

to get exemption in the absence of any other evidence to support that he is entitled to refund. Hence, on a consideration of the above said

judgment and also on the consideration of the facts involved, we are of the opinion that the appeal will have to be allowed and accordingly the

same is allowed and the question of law framed is answered in favour of the revenue.

10. Inasmuch as the Tribunal has merely relied upon the certificate of the Chartered Accountant and in order to give sufficient opportunity to first

Respondent while answering the question of law in favour of the revenue, the order passed by the Tribunal is hereby set aside and the matter is

remitted back to the Tribunal for a fresh consideration of the appeal filed before it. The first Respondent is permitted to furnish any other substantial

evidence in support of his claim for refund. It is made clear that if the first Respondent has failed to produce any other evidence, the Tribunal is

directed to proceed with the case and decide the same on merits in accordance with law.