

(2008) 02 MAD CK 0230
In the Madras High Court
Case No : C.M.A. No. 341 of 2008

Commissioner of Customs (Exports)

APPELLANT

Vs

Choice International

RESPONDENT

Date of Decision : 07-02-2008

Acts Referred:

Customs Act, 1962 — Section 129B, 129E, 18(1), 18(2)

Citation : (2008) 128 ECC 31 : (2008) 154 ECR 31 : (2008) 228 ELT 190

Hon'ble Judges : K. Raviraja Pandian, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : S. Udayakumar, for the Appellant;

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—This appeal is filed by the Department against the order of the Customs, Excise and Service Tax Appellate Tribunal, Chennai made in Final Order No. 789/2007 dated 27.6.2007 along with Stay Order No. 645/2007.

2. The appeal before the Customs, Excise and Service Tax Appellate Tribunal came to be filed against the demand of anti-dumping duty on Compact Fluorescent Lamps (CFL, for short) imported by the respondent herein and cleared under flour Bills of Entry during November-December 2002. The CFLs are of Chinese origin and are governed by two notifications viz., Notification No. 128/2001 dated 21.12.2001 (Provisional) and Notification No. 138/2002 dated 10.12.2002 (final). The goods imported by the respondent were provisionally cleared u/s 18(1) of the Act against the bonds executed by the importer for a period of six months. The bonds were not renewed nor were any such renewal requisitioned by the Department. Further, no show cause notice was issued by the Department. The Assistant Commissioner of Customs, however, issued a letter to the importer proposing finalisation of provisional assessments u/s 18(2) of the Customs Act and ultimately passed an order finalising assessment and called upon the importer to pay anti-dumping duty on the goods imported by them. The importer has taken the order on appeal to the Commissioner

(Appeals), who directed the importer to pre-deposit the entire amount of the duty for the purpose of Section 129E of the Customs Act. As the order has not been complied with, the Commissioner (Appeals) has dismissed the assessee's appeal. The said order was taken on appeal to the Tribunal. The Tribunal remanded the case after setting aside the order of dismissal of the main appeal as well as the interim order directing the importer to pre-deposit the entire amount of anti-dumping duty with direction to the Commissioner (Appeals) to pass fresh speaking order on the assessee's stay application in accordance with law and the principles of natural justice. On remand, the appellate authority passed an interim order directing the importer to pre-deposit 75 percent of the amount of duty within the time stipulated by it. Here again, the interim order has not been complied with. The Appellate Authority dismissed the appeal for failure of pre-deposit. Once again that order has been carried to the Tribunal. The Tribunal by the impugned order set aside the order of the Commissioner with a direction to the Commissioner (Appeals) to dispose of the importer's appeal on merits without insisting on any pre-deposit. The said order has been passed by the Tribunal following its earlier order dated 4.1.2007 made in Final Order No. 14-20/2007.

3. Mr. Udayakumar, learned Counsel appearing for the appellant has very strenuously contended that in this case the revenue involved is very huge. Each case has to be adjudicated depending upon the facts of the particular case. Though power has been vested with the authorities for granting waiver of the pre-deposit. That power has been exercised judiciously. In this case the Tribunal has passed the order of waiving the pre-deposit for no reason.

4. We heard the argument of the learned Counsel for the appellant and perused the materials on record.

5. The Tribunal has given its reasoning as follows:

...5. After giving careful consideration to the submissions, we note that the decision in *Silco Agencies* 2006 (198) ELT 406 was rendered by this Bench in Oct'2-5 when the decision of the Bangalore Bench in the cases of 2005 (128) ECR 62 and *Commissioner of customs, Cochin v. Royal Impex* 2006 (204) ELT 567 was not available. In our recent order (Final Order No. 14-20/07 dt. 4.1.07 *ibid*), we considered the decision of the Delhi and Bangalore Benches and took a definite stand with regard to the finalization of provisional assessments done by the Asst. Commissioner u/s 18(2) of the Customs Act de hors the fact that the PD bond executed by the assessee at the time of provisional release of the goods had expired long back. We also took into account the fact that there is no charging provision for provisional anti-dumping duty and that a Notification determining the final anti-dumping duty with retrospective effect is repugnant to Rules 13 & 20 of the Anti-dumping Rules. This view of the Tribunal, taken on a legal issue, vide our Final Order No. 14-20/2007 dt. 4.1.07 *ibid*, is yet to be challenged by the Revenue. In the circumstances, the respondent cannot be heard to say that the view taken by this Bench in final order dated 4.1.07 is

legally incorrect. On the question whether the decision of the Delhi Bench must prevail over the decision of the Bangalore Bench, we reserved our view and Id. SDR's submission on the point will be considered at final hearing stage.

6. Thus, the Tribunal has found a strong prima facie case in favour of the importer against the levy of anti-dumping duty retrospectively. As a matter of fact the Tribunal relied on its earlier Final Order dated 4.1.2007 on the very same issue which is the requirement of judicial consistency. It is not established before us that the order of the Tribunal dated 4.1.2007 has been modified or altered by any Court. Even assuming that the Department has filed an appeal against the said order that would not by itself is a reason for not following the order of the Tribunal (vide *Sri Rajendra Mills Limited v. Joint Commercial Tax Officer, Salem* reported in (1971) 28 STC 483 . Having regard to the peculiar facts and circumstances of the case and the power of the Tribunal u/s 129B of the Act, we are not able to find anything irregular in the impugned order of the Tribunal.

7. The impugned order has been passed by the Tribunal on 27.6.2007. If the appellants are very particular about the collection of the revenue, they would have insisted the Commissioner Appeals to dispose of the appeal itself on merits by this time. We can also take judicial notice that in several of such cases the main appeal itself was disposed of by the statutory authorities at the time of hearing waiver application. Hence, the argument projected by the learned Counsel that huge revenue is involved cannot be ipso facto a reason for interfering with the order of the Tribunal.

8. For the fore-going reasons, the appeal is dismissed. There will be no order as to costs.