(2016) 03 MAD CK 0240

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 1936 of 2010 and M.P. No. 1 of 2010

Commr. of Cus. (Exports), Chennai-I APPELLANT

Vs

Texworth International RESPONDENT

Date of Decision : 18-03-2016

Acts Referred:

Citation : (2016) 334 ELT 607

Hon'ble Judges : V. Ramasubramanian and K. Ravichandrabaabu, JJ.

Bench : Division Bench

Advocate : R.K. Sekna Reshma, Advocate, for the Appellant; Joseph Prabhakar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramasubramanian, J.—This appeal was filed by the Revenue under Section 130 of the Customs Act, 1962 and it was admitted on 30-7-2010 on the following two substantial questions of law.

"(i) Whether the order of the CESTAT upholding the qualified and conditional second test report is correct as against the unqualified/unconditional report done based on the testing of samples by competent testing authorities in India under Section 144 of the Customs Act, 1962? and

(ii) Whether the order of the CESTAT upholding the qualified and conditional second test report is correct ignoring the fact that the second test itself was not done in accordance with the established procedure for testing of samples as observed by the testing authority?"

2. Heard Mr. Sekna Reshma, learned counsel for the appellant and Mr. Joseph Prabhakar, learned counsel appearing for the respondent.

3. The respondent filed a bill of entry on 29-4-2004 for the clearance of an imported consignment of mulberry raw silk yarn of Chinese origin. The invoice indicated that the mulberry raw silk was of 3A Grade, as per CIQ certificate.

4. Vide Customs Notification No. 106/2003, dated 10-7-2003, the Government of India levied anti-dumping duty on the import of mulberry raw silk of 2A Grade and below, originating or exported from China. Since the invoice produced by the respondent declared the silk to be of 3A Grade no anti-dumping duty was leviable. However, samples were drawn from the consignment and sent to the Central Silk Technological Research Institute, Bangalore by the Department. The laboratory, vide its report dated 25-5-2004, stated that the samples belonged to 2A Grade.

5. Hence, a show cause notice dated 18-8-2004 was issued, leading to an Order-in-Original being passed, directing the confiscation of the entire material, with a condition that the goods can be redeemed upon payment of fine and anti dumping duty. The respondent filed an appeal before the Tribunal. Before the Tribunal, a second test report was produced from the very same Institute as per which, the goods were of 3A Grade. Therefore, based upon the same, the Tribunal allowed the appeal of the respondent, forcing the Revenue to come up with the above appeal.

6. Even as per the grounds of appeal filed by the Department, the Department itself agreed to a second test report. Once the Department had agreed to a second test report without reserving any right to rely upon the first test report, it is not open to the Department to contend that the second test report ought to be dumped.

7. The contention of the learned counsel for the appellant/Department is that the second test report was a qualified and a conditional one.

8. But unfortunately, we do not see any condition attached. The samples sent for the second test had also been drawn from the very same consignment. The samples were actually available with the Department. This is borne out by paragraph 5 of the grounds of appeal. Therefore, we find nothing wrong with the order of the Tribunal.

9. Accordingly, the questions of law are answered against the Revenue/ Department. The civil miscellaneous appeal is dismissed. No costs. Consequently, the above MP is also dismissed.