(2021) 11 CESTAT CK 0049

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 87936 Of 2013

Diamond Mink Blankets Ltd APPELLANT

Vs

Commissioner Of Customs (Import) RESPONDENT

Date of Decision : 16-11-2021

Acts Referred:
Customs Act, 1962 — Section 30, 30(iii), 46, 108, 111(f), 111(m), 126

Citation : (2021) 11 CESTAT CK 0049

Hon'ble Judges : Ajay Sharma, J;C.J. Mathew, Technical Member

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal of M/s Diamond Mink Blankets Ltd originated in proceedings prompted by the existence of two bills of lading, differing in description of goods and in 'notify party', corresponding to line 203 in Import General Manifest (IGM) no. 20705/2008 dated 25th October 2008 filed by M/s Oasis Shipping Pvt Ltd.

2. Against the said line, the manifest declared arrival of '100% polyester filament yarn raw white on hanks 150D/48F' intended for delivery to M/s Vallabh Wool Industries upon release by the intermediary bank and, claiming that the error in bill of lading was to be remedied in accordance with the fresh bill of lading containing details supra, application was filed on 18th June 2010, for the line to describe the goods as 'nylon viscose blended yarn' intended for delivery to M/s Diamond Mink Blankets Pvt Ltd. Show cause notice dated 19th November was issued to M/s Oasis Shipping Pvt Ltd and the original 'notify party' for rejection of the request for amendment while, at the same time, proposing confiscation of goods under section 111(f) of Customs Act, 1962 besides imposition of penalties on both. Upon order-in-original dated 27th November 2010 arising from another proceedings being challenged by both Assistant Commissioner of Customs (Imports), Nhava Sheva as well as M/s Oasis Shipping Pvt Ltd, the first appellate authority, taking note of impleading application by the new 'notify party', M/s Diamond Mink Blankets Ltd, the circumstances leading thereto and the plea of

the department that such order was beyond jurisdiction owing to pendency of notice issued by Additional Commissioner of Customs, quashed that proceeding vide order dated 15th February 2012 which also directed that, in the pending proceedings, representation of M/s Diamond Mink Blankets Ltd should also be considered by the adjudicating authority.

3. Following due process, order dated 31st August 2012 confiscated the goods under section 111(f) of Customs Act, 1962, though permitted to be redeemed on payment of fine of Rs.10,00,000/-, besides imposing penalty of Rs.5,00,000/- on M/s Vallabh Wool Industries and Rs.3,00,000/- on M/s Oasis Shipping Pvt Ltd while rejecting the request for amendment. Surprisingly, the said order also directed the assessing officer to assess the goods in accordance with the provisions of Customs Act, 1962 even as it is on record that bill of entry for clearance of the said goods had not been filed.

4. In the appeal of M/s Diamond Mink Blankets Ltd against this order, Commissioner of Customs (Appeals), Jawaharlal Nehru Custom House, Nhava Sheva, Mumbai - II, vide order-in-appeal no. 509(Import Noting)/2013 (JNCH)/ IMP-382 dated 10th June 2013, upheld the confiscation, as well as redemption condition, and penalties leading to this appeal being filed on 17th December 2013.

5. During the course of the hearing, it was informed on behalf of the appellant that this Tribunal had disposed off an appeal of M/s Vallabh Wool Industries, against order-in-appeal no. 225(Import Noting)/2013 (JNCH)/IMP-174 dated 18th March 2013, challenging the penalty imposed on them for their connection with the erroneous declaration in the line of the manifest pertaining to bill of lading no. SXNHC7137/13.10.2008 which, co-incidentally, is the subject matter of the appeal before us now by allowing the limited relief claimed with the finding that

'5. Perused the case record, It is observed that after alert was issued by the CIU on 03.11.2008, the goods in question was lying abandoned in the Customs custody up to 18th June, 2010 till the request for amendment was made by the Shipping Line. Except the statement of the proprietor of the appellant firm and Managing Director of the intended importer M/s Diamond Mink Blankets Ltd. recorded under Section 108 of the Customs Act, other documentary evidence on record is available to substantiate that appellant was earlier engaged in mis-declaration or undervalued imported goods and not a single reference like bill of entry number is made to that effect that would provide any detail concerning involvement of appellant in previous occasions. In respect of the consignment under dispute proprietor Mr. Hemraj Jain of appellant firm stated that discrepancy (in the description) of the product came to its knowledge during interactions with shipper while enquiring about the documents for which appellant refused to receive the goods and not honoured the imported documents received by the bank and verbally over phone informed the matter to the exporter, after which it had no knowledge about the developments concerning the imported goods. It appears to be a self-exculpatory statement given under Section 108 of the Customs Act, but no materials evidence on record has been placed by the respondent-department that would substantiate involvement of the appellant firm in the alleged transaction except that of the reply of the appellant regarding his source of acquirement of knowledge of discrepancy in the item supplied to the appellant firm. However, suspicion however strong cannot take the place of proof to established guilt of the appellant. Further the ground taken in the Order-in-Original and Order-in-Appeal with reference to sub-Section (iii) of Section 30 of the Customs Act, 1962 is of no use to impose penalty on the appellant in view of the fact that import manifest or import report, even if considered as incorrect and done with fraudulent intention since was not established to have been done by the appellant, amendment may only be refused on that ground that would have bearing on the exporter or the intended purchaser and not on the appellant.'

in Vallabh Wool Industries v. Commissioner of Customs (Export), Nhava Sheva [2020 (372) ELT 888 (Tri.-Mumbai)]. It is also on record that the other party in the proceedings, M/s Oasis Shipping Private Ltd, did not challenge the adjudication order.

6. We have heard Learned Counsel for the appellant and Learned Authorised Representative at length. In the factual matrix of the narration supra, the issue for determination is the locus standii of the appellant herein to have the confiscation quashed and to seek that changes be incorporated in the particular line of the import general manifest.

7. It is contended on behalf of the appellant that the notice had invoked section 111(f) of Customs Act, 1962 even as that was not consistent with the allegation to which section 111(m) of Customs Act, 1962 would have been more apt. It does not require in-depth knowledge of the statute, which has been enacted in pursuance of constitutional empowerment to collect duties of customs on import of goods, to appreciate that, in addition to the responsibility devolving upon the importer, with attendant obligation to make correct declaration of material particulars, for discharge of duty liability, the custodianship of cargo till clearance for home consumption is contingent upon control of conveyances that carry such goods through approved routes of arrival. The report envisaged in section 30 of Customs Act, 1962 as obligation of person-in-charge of conveyance is no less important than the particulars essential for proper assessment. The breach of the latter leads to detriment arising from section 111(m) of Customs Act, 1962 while breach of the former triggers detriment intended by section 111(f) of Customs Act, 1962. Both have independent, and mutually exclusive, stimuli and consequences. Proceedings for wrong declarations in the manifest are initiated against the person-in-charge of conveyance, or the authorized agent, even before an importer or importers may seek acknowledgement of status by filing bill of entry mandated by section 46 of Customs Act, 1962. In such proceedings, the importer faces no detriment. A careful perusal of the decision of the Tribunal

in re Vallabh Wool Industries would elicit this distinguishment but for which that bench of the Tribunal would have lacked jurisdiction to decide the appeal. It was the lack of evidence of any linkage of the purported importer with the findings of the original authority that were detrimental to the agent of the person-in-charge of the conveyance that led to setting aside the penalty.

8. At the stage of custodianship before an importer, upon conclusion of assessment and clearance thereof, is the recipient of the imported goods, it is the person-in-charge of conveyance, or the agent, who is responsible for the imported goods. Consequently any finding qua the import manifest, including confiscation under section 111(f) of Customs Act, 1962, can be cause of grievance to the person-in-charge of conveyance, or agent, and none other. Whatsoever may be the claim of the appellant herein to the impugned goods, that lies entirely within the commercial engagement of theirs with the shipper and the person-in-charge of the conveyance without intruding upon the statutory relationship of the person-in-charge of the conveyance, or the agent, and the customs authorities. The appellant cannot claim a relief that has the consequence of erasing the liability of M/s Oasis Shipping Pvt Ltd which, by failure to challenge the order of the original authority or by overcoming the confiscation under section 111(f) of Customs Act, 1962 upon compliance with the terms of redemption set out therein, has attained finality. This appears to have been conceded by the appellant as is evident from column no.12 of the memorandum of appeal.

9. The confiscation of the impugned goods having been, thus, accepted, section 126 of Customs Act, 1962 vests such goods with the Central Government. Therefore, notwithstanding any commercial engagement of the appellant herein with any other person in relation to the goods, this ownership by the Central Government cannot be alienated. Consequently, the claim of the appellant herein for acknowledgement of its claim to be entitled to file bill of entry for clearance thereafter by making alterations in the particular line of the import general manifest cannot be entertained.

10. Accordingly, the appeal of M/s Diamond Mink Blankets Ltd is dismissed.

(Order pronounced in the open court on 16/11/2021)

