
(2014) 08 MAD CK 0223

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 3573 of 2006

Ganapathy Agencies

APPELLANT

Vs

Customs, Excise and Service Tax Appellate Tribunal

RESPONDENT

Date of Decision : 08-08-2014

Acts Referred:

Customs Act, 1962 — Section 111(m), 112(a)

Citation : (2014) 47 GST 623

Hon'ble Judges : R. Sudhakar, J;G.M. Akbar Ali, J

Bench : Division Bench

Judgement

R. Sudhakar, J.—The appellant, who is an importer, has filed this appeal aggrieved against the Final Order No. 670 of 2006, dated 31.7.2006, passed by the Customs, Excise and Service Tax Appellate Tribunal (for brevity, "the Tribunal") and the same was admitted on the following substantial questions of law:

"1. In the facts and circumstance where the goods were purchased on High Sea sale basis and applicants have declared the goods initially on the basis of the description of the foreign supplier, whether at all Section 111(m) of the Customs Act is attracted?

2. In the facts and circumstance of the case, though it was observed by the 1st respondent that there was no mis-declaration with regard to the Grade and Value at the time of filing the Bill of Entry, whether the 1st respondent was correct in not setting aside the adjudication order imposing redemption fine and penalty in its entirety?

3. In the facts and circumstance of the case where the appellant was as such denied the benefit of exemption, whether it was correct in imposing redemption fine and penalty as well which would amount to double jeopardy?"

1.1 The brief facts of the case are as under: The appellant imported "Stainless Steel Coil AISI 304" from Belgium and filed a Bill of Entry dated 31.1.2002

claiming exemption from payment of duty under DEEC (Duty Exemption Entitlement Certificate) Scheme. On examination of the goods by the experts from the National Metallurgical Laboratory, Chennai, it was stated that the goods, though apparently are of second quality, still conform to AISI 304 Grade in terms of chemical composition. Consequent to the same, the Bill of Entry was withdrawn and a fresh Bill of Entry was filed, wherein the goods were declared as "Stainless Steel Coil Second Quality Grade AISI 304". A dispute arose between the importer and the department as to whether the goods have been correctly declared in the original Bill of Entry. The Commissioner of Customs held that it was a case of mis-declaration with an intention to avail the benefit of DEEC Scheme and ordered confiscation of the goods under Section 111(m) and (o) of the Customs Act with option for redemption on payment of fine of Rs. 2.50 Lakhs, apart from imposing a penalty of Rs. 30,000/- under Section 112(a) of the Customs Act.

1.2 Pursuant to the said order passed by the Commissioner of Customs, the importer filed Bill of Entry for home consumption and obtained clearance of the goods against payment of duty, redemption fine and penalty. However, the importer appealed to the Tribunal challenging the redemption fine and penalty imposed by the Commissioner of Customs.

1.3 The Tribunal was of the view that there is implicit admission by the importer that for the purpose of claiming benefit under DEEC Scheme, the importer mis-declared the goods. However, the Tribunal taking note of the fact that the goods were subsequently cleared by the importer on payment of duty, redemption fine and penalty, reduced the quantum of redemption fine and penalty to Rs. 1,00,000/- and 5,000/- respectively.

1.4 Aggrieved by the said order passed by the Tribunal, the present appeal is filed on the substantial questions of law, referred supra.

2. Even though three substantial questions of law, referred supra, were raised, the learned counsel for the appellant fairly submitted that on the plea of mis-declaration with regard to grade and value of the goods, he is not seriously disputing the finding of the Commissioner of Customs as well as the Tribunal. The only question now raised is with regard to the quanta of redemption fine and penalty.

3. We find from the order of the Tribunal that the Tribunal has, in fact, been lenient in reducing the redemption fine from Rs. 2,50,000/- to Rs. 1,00,000/- and penalty from Rs. 30,000/- to Rs. 5,000/- in a case of proven mis-declaration of goods with an intention to avail the benefit conferred under DEEC Scheme, which, in our considered opinion, justifies confiscation of goods and imposition of redemption fine and penalty. Considering the facts and circumstances of the case, we are of the firm view that the order passed by the Tribunal warrants no interference and the importer is not entitled to seek any further indulgence. For the foregoing reasons, this appeal is dismissed and the substantial questions of

law are answered against the appellant. No costs.