
(2014) 02 MAD CK 0082

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 1025 of 2011 and M.P. No. 1 of 2011

Ishwar Impex

APPELLANT

Vs

CESTAT, Chennai

RESPONDENT

Date of Decision : 06-02-2014

Acts Referred:

Customs Act, 1962 — Section 111(m), 111(o), 112(a), 48

Citation : (2014) 306 ELT 371

Hon'ble Judges : T.S. Sivagnanam, J;Chitra Venkataraman, J

Bench : Division Bench

Judgement

T.S. Sivagnanam, J

1. This appeal by the importer is directed against the Final Order No. 1253 of 2010, dated 10-12-2010, 2011 (266) E.L.T. 50 (Tri. -Chennai) passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai. The appeal has been admitted on the following substantial questions of law:

"1. Whether the first respondent has correctly decided the ownership of the goods?

2. Whether the first respondent is right in relying on Section 48 of the Customs Act, 1962 when the said Section has no application at all to the facts of the case?

Learned counsel appearing for the appellant has made an endorsement giving up the 3rd respondent. The facts, which are necessary for disposal of the appeal are that the 3rd respondent - M/s. Sandip Exports Limited was holder of advance licence and imported 3061.82 Kgs of "Mulberry Raw Silk" from China under Bill of Entry No. 39260, dated 8-9-2003 mentioning the value of the goods as 37507 US\$. The said importer availed the benefit of Customs Notification No. 48/99, dated 29-4-1999 claiming the benefit of duty exemption. The bill of entry was assessed to a value of Indian Rupees 18,49,278/-. The said importer did not clear the goods for a long period of time and the consignment was seized by the Officers of the SIIB on 1-10-2004 and was liable for confiscation under the

Customs Act. During the course of investigation, it came to light that the said importer was a continuous defaulter and has been misusing the import licence on very many aspects and a show cause notice was issued, which also covered the Bill of Entry in question. The importer did not respond to the show cause notice nor appeared for the personal hearing before the Commissioner on receiving the same. The appellant herein made a request to the Department stating that the supplier, a Chinese party, had recalled the original documents from the Bank and issued revised documents, in the name of the Sandip Exports Limited and on that basis requested for amendment of the import documents by inserting the name of the appellant as an importer. Since the said application was kept pending, the appellant filed writ petitions in W.P. Nos. 29860 of 2004 and 1827 of 2006. It is stated that these writ petitions were disposed of by a common Order dated 31-3-2006 (copy of order has not been filed in this appeal), directing the Commissioner to adjudicate the show cause notice dated 11-2-2005 issued to Sandip Exports Limited and the appellant herein was permitted to participate in the proceedings. The Commissioner by Order dated 4-5-2006 denied the benefit of duty exemption claimed under Customs Notification No. 48/99, dated 29-4-1999 and demanded differential duty of Rs. 20,34382/- along with interest applicable as per Section 28AB of the Customs Act. The goods were directed to be confiscated under Section 111(m)) and 111(o) of the Customs Act with an option to Sandip Exports Limited to redeem the goods on payment of fine of Rs. 30,00,000/-. Penalty of Rs. 8,00,000/- was imposed on Sandip Exports Limited under Section 112(a) of the Act. So far as the claim made by the appellant for change of title was repudiated in respect of the said goods. Aggrieved by that portion of the Order passed by the Commissioner repudiating the claim of the appellant, the appellant preferred appeal before the Tribunal. However, in the said appeal, the original importer viz., Sandip Exports Limited was not made a party. The Tribunal by Order dated 21-9-2006 held that the appellants were entitled to claim ownership of the goods. The redemption fine imposed was reduced to Rs. 2,00,000/- from Rs. 30,00,000/- and the Department was directed to release the goods in favour of the appellant herein. Aggrieved by such order, the Department preferred appeal before this Court in C.M.A. No. 1028 of 2007. Though at the time of admission of the appeal only one question regarding the power of the Tribunal to reduce the redemption fine was framed, subsequently, at the time of final disposal, the Division Bench also framed a question as regards the ownership of the goods. The Division Bench by order dated 11-11-2009 held that the non-impleading of the original importer - Sandip Exports Limited was not proper and on that ground itself the order of the Tribunal was liable to be set aside. Further, taking note of the findings recorded by the authorities, this Court observed that there was no relinquishment of goods by Sandip Exports Limited and they could never relinquish title to the goods inasmuch as the goods were already seized by the Customs Authorities for infringement of the conditions of advance licence and in law, the supplier had not recalled the documents in respect of the said goods, that the so called amendment of manifest by the overseas supplier was after efflux of time, that

too, after the seizure of the goods and that the recalling of the documents by the overseas supplier from the importer's bank could have been made only on the advice of the importer on the ground that the importer relinquished the title to the goods. As regards the plea raised by the appellant claiming for release of goods it was pointed that if that was permitted, the recovery of penalty of Rs. 8,00,000/- could not be made by the Department and they have to look upon the original importer of the same. Therefore, this Court was of the view that Sandip Exports Limited should be made a party before the Tribunal and without impleading them as a party to the proceedings, the plea raised by the appellant cannot be considered. Further, it was pointed out that when the question as to ownership of the goods imported is substantial in issue as such, the decision on that issue will have far reaching consequence for determination of release of goods, the levy of duty, the levy of redemption fine and levy of penalty for improper import and it was observed that the Tribunal ought to have examined the question as to the rights of the original importer and the claim made by the appellant herein, who seeks to virtually subrogate itself to that of the original importer based on certain documents stated to have been obtained from the Overseas supplier. Further, the Division Bench noted that the original importer - Sandip Exports Limited has committed default, which had occasioned the appellant to claim for release of the goods in its place. Therefore, the Division Bench directed that Sandip Exports Limited has to be impleaded as a party and the Tribunal has to decide the matter thereafter. The Division Bench noticed that two letters were written by the Department dated 19-4-2007 and 11-1-2008. Commenting on those two letters, it was observed that when substantial issues and right of the appellant to claim the release of the goods are subject matter of consideration in the appeal, it was not known as to why the subordinate officers of the Department could write such communications to the appellant, which only shows lack of coordination among the officers of the Department themselves while dealing with these matters, where issues are pending before the higher forums. Accordingly, with these observations, the appeals stood disposed of. On remand, the Tribunal impleaded M/s. Sandip Exports Limited as a party to the proceedings and after issuing notice, the original importer was represented through counsel and contended that they do not have money to retrieve the documents from the Bank in respect of the goods in question and they are not claiming, the goods. We are at a loss to understand as to how Sandip Exports Limited could have taken such stand, more so, when the goods have already been confiscated and seized by the Department. The Tribunal, after consideration of the facts, by Order dated 10-12-2010 dismissed the appeal. Challenging the same, the appellant has preferred this appeal, which has been admitted on the questions of law referred above.

2. We have heard Mr. Joseph Prabakar, learned counsel appearing for the appellant and Mr. P. Mahadevan, learned counsel appearing for the revenue. On a bare perusal of the facts in issue, it is evidently clear that the plea raised by the appellant lacks bona fide. We are convinced to say so having taken note of the

fact as noticed by the original authority as well as the Tribunal. The adjudicating Commissioner ordered confiscation of the goods, but allowed Sandip Exports Limited to redeem the same on payment of redemption fine and penalty. The penalty of Rs. 8,00,000/- imposed on Sandip Exports Limited was set aside by the Tribunal by Order dated 9-10-2007, which has become final. As regards the claim of the appellant, it was observed that they were nowhere in the picture at the time till the investigation was started by the authorities on 7-1-2003 and the statements were recorded from the Director of M/s. Sandip Exports Limited. The appellant appears to have come into the picture after nearly a year i.e., on 4-12-2003 by producing certain documents said to have been given by the foreign supplier requesting for amendment of the import manifest. Such request for amendment was made by the appellant on 12-12-2003. As rightly pointed out by the Tribunal, this claim of the appellant was being made after the Customs authorities detected the fraudulent attempt to clear the very same goods without payment of duty under the advance licence scheme, to which the Sandip Exports Limited were not entitled to. After noticing the facts, the Tribunal confirmed the Order passed by the Commissioner ordering confiscation. We agree with the reasons assigned by the Tribunal while confirming the Order passed by the adjudicating authority. As regards the claim of the appellant herein, in our view, the observations made by the Division Bench of this Court in C.M.A. No. 1028 of 2007, dated 11-11-2009 clearly stares at the appellant. On facts, the original authority found that there was no relinquishment of goods by the original buyer and there could have been no such relinquishment, more so, when the Customs authorities have already seized the goods for violation of conditions of advance licence. The claim made by the appellant was after long lapse of time, by then the property was vested with the Government. Learned counsel for appellant pointed out that the Tribunal in Paragraph No. 7 of the Order has referred to Section 48 of the Act and the said provision has absolutely no relevance. In our view, the misreading of the observations made by the Tribunal has led to such a ground being raised by the appellant. The Tribunal has referred to Section 48 of the Act to state that it contemplates clearance on import of goods within thirty days from its landing and this applies to the person who filed the bill of entry on 8-9-2003 viz., Sandip Exports Limited. Therefore, the Tribunal has not committed any error in referring to Section 48 of the Act while taking note of the conduct of M/s. Sandip Exports Limited. So far as the claim made by the appellant the Tribunal noted that the appellant made its claim in December 2003 only after the offence was detected by the Customs Authorities and the goods were seized. That apart, the Tribunal also set aside the penalty imposed on M/s. Sandip Exports Limited and therefore rightly pointed out that there would be loss of public revenue if the appellant is allowed to clear the impugned goods on payment of normal duty and only on normal redemption fine of Rs. 2,00,000/- as ordered by the Tribunal earlier, which was set aside by this Court in C.M.A. No. 1028 of 2007. In the light of the findings recorded by this Court in C.M.A. No. 1028 of 2007, dated 11-11-2009, more particularly in Paragraph Nos. 7 and 8, the appellant has not made out any case while interfering with the order passed

by the Tribunal. Accordingly, the appeal fails and is dismissed. The questions of law framed are answered against the appellant. However, there is no order as to costs. Consequently, the connected miscellaneous petition is closed.