(2009) 03 CESTAT CK 0001

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : 363 OF 2006

Kansara Modler Limited APPELLANT

Vs

Commissioner of Customs RESPONDENT

Date of Decision : 26-03-2009

Acts Referred:

Citation : (2009) 03 CESTAT CK 0001

Hon'ble Judges : R. M. S. Khandeparkar, M. Veeraiyan

Advocate : L. P. Asthana, Vijay Kumar

Final Decision : Appeal allowed

Judgement

R.M.S. Khandeparkar, J. (President)

1. Heard. This appeal arises against the order dated 28.12.2005 passed by the Commissioner of Customs, Jodhpur.

2. By the impugned order the Commissioner had directed confiscation of goods and imposition of redemption fine and penalty.

3. Brief facts, relevant in this case, are that the appellants sought to import goods worth Rs. 10,89,73,604.15p pursuant to licence obtained on 11.10.96 under EPCG scheme. In terms of the said scheme, under a licence granted to the appellants, they were liable to import capital goods for a minimum value of Rs. 20 crores within the validity period of licence. The said condition was specifically stipulated under Serial No. 6 of the Notification No. 111/95 dated 5.6.95 and the condition No. 5 under Notification No. 29/97 dated 1.4.97. The validity period of the licence granted to the appellant was of 24 months from the date of grant of licence i.e. from 11.10.96. At the request of the appellant, it was revalidated for another one year i.e. up to 10.10.99 on the condition that no further validity period would be granted for the licence. The extended period expired on 10.10.99. The appellant could not import capital goods beyond the value of Rs. 10,89,73,604.15p. during the entire period, including the extended period. Consequently, three show cause notices came to be issued requiring the

appellant to justify the failure on the part of the appellant to comply with the said conditions and as to why the necessary action under the notification should not be taken. Two show cause notices were dated 6.10.2000 and third one is 29.9.2000 and the same were relating to three different imports made by the appellant. All these proceedings were initiated by the same Commissionerate and, therefore, the proceedings in all the three show cause notices were before the same authority and were disposed of by a common impugned order dated 28.12.05.

4. Learned Advocate appearing for the appellant submitted that it was due to financial constraints that the appellant could not satisfy the condition regarding import of capital goods upto Rs. 20 Crores.

5. The learned DR submitted that mere financial constraints cannot be a justification for exemption from the condition as the said condition was in accordance with the scheme under which the benefit of licence was obtained by the appellant.

6. The fact that the appellant had failed to import the capital goods beyond the value of Rs. 10,89,73,604.15p. is not in dispute. That being admitted and clearly established fact, it was necessary for the appellant to establish that inspite of the said failure, the appellant was entitled for exemption from the condition regarding import of minimum value of Rs. 20 crores as that was the specific condition attached to the licence granted to the appellant to enable him to import the goods under the said scheme. It is not in dispute that in terms of said licence, the appellants were entitled to import the goods without paying import duty. The appellant having availed the benefit under the said licence had to ensure that the said benefit was availed with due compliance of the condition imposed at the time of grant of licence under the scheme. The excuse sought to be made based on financial constraints can hardly be considered as a ground for exemption from the said condition. There being no other explanation forthcoming, which could justify the exemption, we find no fault in impugned order passed by the Commissioner.

7. The learned advocate for the appellant also submitted that in any case, the impugned order does not take into consideration the mitigating factors for the purpose of imposition of penalty and also has failed to consider the circumstances which clearly disclose bonafide on the part of the appellant in making efforts to comply with the obligation under the licence while imposing higher rate of interest.

8. The learned DR tried to justify the impugned order in this regard, but could not point out any discussion as such in the impugned order to justify the higher rate of interest as well as the amount of penalty.

9. Perusal of the records as pointed out by the learned advocate for the appellant clearly disclose that the appellant had made all the necessary efforts to comply with the obligation regarding the export of the goods consequent to imports

made under the said licence and it is also contended that the reports revealed that the export obligation record with respect to the goods manufactured by the appellant was very good for the relevant period. However, this aspect was not at all considered by the adjudicating authority.

10. Perusal of the impugned order indeed discloses that the adjudicating authority had not taken pains to consider the mitigating factors while imposing penalty as well while quantifying the rate of interest. Though the notification specify various conditions, it is always necessary for adjudicating authority to verify whether law permits to import at lesser rate of interest and for that purpose has to take into consideration the instructions issued from time to time by the Board, as also the mitigating circumstances.

11. Undoubtedly, such exercise should be within the parameters of law, nevertheless without ignoring the facts and circumstances of a case under adjudication. Since the adjudicating authority has not undertaken this exercise in the matter in hand, in our considered opinion, it is appropriate to remand the matter for the said purpose i.e. to consider the rate of interest and penalty amount in the matter as well as redemption amount in accordance with the provisions of law and the observations made hereto above. The parties shall be entitled to produce evidence, if any, in support of rival contentions in this regard. On taking into consideration all such materials which may be produced by the parties, the adjudicating authority should pass a reasoned order in this regard.

12. In the result, appeal partially succeeds. The same is allowed to the extent of rate of interest, penalty amount and the redemption amount and the matter is remanded to be decided the same afresh in accordance with the provisions of law and taking into consideration the observations made herein above. Remaining part of the impugned order is not interfered with. Ordered accordingly.