(2014) 08 MAD CK 0041

In the Madras High Court

Case No : C.M.A. No. 3449 of 2013

Lukkad Impex APPELLANT

Vs

Commissioner of Customs (Appeals), Chennai RESPONDENT

Date of Decision : 11-08-2014

Acts Referred:

Citation : (2015) 316 ELT 85

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

Bench : Division Bench

Advocate : Palani Selvaraj for C. Sangamithirai, Advocates for the Appellant; Vikram Ramakrishnan, Advocates for the Respondent

Judgement

R. Sudhakar, J.—We have heard the learned counsel for the appellant/importer as well as the learned counsel for the respondent. Appeal is filed challenging the order passed in Appeal No. C/14/2010, dated 26-10-2010 by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai (2011 (268) E.L.T. 249 (Tri. - Chennai)) , confirming the order of the Commissioner (Appeals).

2. The issue raised before us, in the light of the order passed by the Commissioner (Appeals) and the Tribunal, is whether for the purpose of importing toys, the representative samples are to be sent to testing laboratory and if found to be in conformity with the requirement of law, the toys can be allowed to be imported.

3. The appellant filed Bill of Entry No. 293555, dated 24-8-2009 for the import of toys from China. For the purpose of import, certain documents are required to be submitted along with import, for which, the adjudicating authority, found that the goods imported are not in compliance with the requirements of DGFT Notification 113 (RE-2008)/2004-2009, dated 16-6-2009. Aggrieved thereby, an appeal was preferred before Commissioner (Appeals), who held that there is no direct link to the toys or even with the carton to say the least with the said test certificates.

However, relying upon certain C.B.E. & C. guidelines, the Commissioner (Appeals) passed the following order:

"However, in this regard, C.B.E. & C. has issued guidelines vide letter in File No. 402/32/2009-Cus-III, dated 7-12-2009 addressed to the Commissioner of Customs (Port-Import), Chennai recognizing laboratories with the BIS standard having the requisite facility to test the goods and inter alia stated that representative samples be sent to any of these testing laboratories. Further, the said letter also mandates that the seized imported toys shall be released in terms of Section 125 in the event of getting conformation.

Under the circumstances, as the goods are still available with the department, appellant may opt for sending representative samples to any of the certified laboratories mentioned in the above mentioned board''s letter. Thereafter, if the imported toys conform to the standards specified, the said prohibited goods shall stand released. In the event of release of the goods, it is mandatory that packaging requirements in terms of DGFT Notification No. 44, dated 24-11-2000 are strictly complied with before their clearance from Customs area.

4. Not satisfied with this order, the appellant/importer filed an appeal before the Customs, Excise and Service Tax Appellate Tribunal. Since other similarly placed importers also preferred appeals, they were disposed of by a common order.

5. Insofar as the present appeal is concerned, the Tribunal passed the following order:

"C/14/2010: In this case, the plastic toys imported by M/s. Lukkad Impex from China were absolutely confiscated by the adjudicating authority as the goods/ packaging materials did not contain any details of manufacturer''s name, address and the period of manufacture, and hence the test reports could not be linked with the consignment under import. No penalty was imposed on the importer. The Commissioner (Appeals) upheld the finding that no link could be established between the plastic toys and the certificates but, however, followed guidelines laid down in C.B.E. & C.F. No. 402/32/2009, dated 7-12-2009 recognising laboratories with the BIS standard having requisite facility to test the goods and stated inter alia that the representative samples may be sent to any of these testing laboratories and in the event of conformation with the standards prescribed in the DGFT notification supra, plastic toys may be released and hence directed that the importers may opt for sending representative samples to any of the certified laboratories covered in the Board''s letter and if the plastic toys conformed to the standards specified, directed release of the goods, subject to compliance with the packing requirements in terms of DGFT Notification No. 44, dated 24-11-2000. Appeal No. C/14/2010 arises against this order."

6. Aggrieved by the Tribunal confirming the order of the Commissioner (Appeals), the present appeal has been filed by the importer.

7. The learned counsel for the appellant submitted that the primary document

has already been submitted and there is no need for further testing. However, the Department pleaded that there appears to be no co-relation between the goods imported and the requirements as per the provisions of Standards of Weights and Measures (Packaged Commodities) Amendment Rules, 2006, more particularly, Rule 6 and the further plea of the Department is that the goods should be tested by the competent authority.

8. The learned counsel for the appellant/importer was agreeable for the testing of the imported toys on sample basis and the Assistant Commissioner of Customs has given a note on 1-8-2014 which reads as follows:

NOTE

Sub: C.M.A. 3449 of 2013. Lukkad Impex v. Commissioner of Customs - Reg.

Please refer to your note F. No. C/256/2013-Legal-Sea, dated 1-8-2014 on the above subject.

In this regard the names of the laboratories where goods are normally sent for testing by the department is as follows:

(i) Central Revenue Control Laboratory, Hills Side Road, Pusa, I.A.R.I., New Delhi-110012.

(ii) Indian Institute of Technology, IIT P.O., Chennai-600036

This is for your kind information and necessary action.

(Sd/-) ASSISTANT COMMISSIONER OF CUSTOMS (PROJECT IMPORT & GR-6)

F. No. S. Misc. 187/2014-Gr. 6

Date: 1-8-2014.

To,

The Deputy Commissioner of Customs, Legal - Sea, Custom House, Chennai-01.

9. This was submitted to the Court. The appellant/importer is agreeable for test on sample basis by Indian Institute of Technology. In order to cut short the litigation, the appeal is disposed of directing the respondent herein to send the representative samples of toys to testing laboratories viz., Indian Institute of Technology (IIT), Chennai-36 as per the procedure and on the basis of such report, appropriate action can be taken thereafter. The Indian Institute of Technology has agreed to have the samples tested at a nominal cost to be borne out by the appellant, for which, the appellant has also consented and IIT should submit a report at the earliest to the Customs Department with a copy to the appellant/importer so as to allow the parties to work out the remedies as per law.

10. With the above observation, the appeal is disposed of. No costs. Office is directed to send a copy of the order to Indian Institute of Technology.

