(2024) 05 CESTAT CK 0025

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No.27628 Of 2013

M/S. Applied Material India Pvt. Ltd. APPELLANT

Vs

Commissioner Of Customs RESPONDENT

Date of Decision : 20-05-2024

Acts Referred:
Customs Act, 1962 — Section 112(a)(ii), 125

Citation : (2024) 05 CESTAT CK 0025

Hon'ble Judges : R. Bhagya Devi, Member (T)

Bench : Single Bench

Advocate : Sneha Philip, Sneha Philip

Final Decision : Allowed

Judgement

R. Bhagya Devi, Member (T)

1. This appeal is filed by the appellant M/s. Applied Materials India Pvt. Ltd. against Order-in-Appeal No. 285/2013 dated 28.05.2013.

2. Briefly stated the facts of the case are that the appellants are 100% EOU engaged in the business of providing software development services. The appellant imported semi-conductor fabrication system claiming the benefit of Notification No.52/2003-Cus. dated 31.03.2003, the value was declared as per the proforma invoice of their suppliers and requested for First Check before assessment. On examination, the Chartered Engineer apprised the value of the goods and opined that the goods were used goods. The Commissioner (Appeals) on observing that it was only during the appraisal by the Chartered Engineer that the used nature of goods was noticed and declared value was Rs.86,64,335/- as against Rs.1,08,29,077/- involving differential duty amount of Rs.5,59,640/-. Since the mis-declaration of the import value has direct bearing on the export obligation to be discharged by the appellants, and the appellants having accepted value arrived at the Chartered Engineers, the goods were liable for confiscation. Consequently, the redemption fine under Section 125 and penalty under Section

112(a)(ii) of the Customs Act, 1962 was upheld.

2. The Learned Counsel submits that the impugned capital goods were imported under Notification No.52/2003-Cus. dated 31.03.2003, and therefore, they were not liable to pay any duty. It is submitted that there is no specific requirement under law to declare the 'used' nature of the goods to be imported and since, the appellant had voluntarily sought for First Check Assessment, the question of any mis-declaration does not arise. It is further submitted that as per the Foreign Trade Policy 2009-2014, all second-hand capital goods other than refurbished/ reconditioned spares of capital goods are freely importable without any conditions. It is stated that there has been no mis-declaration as the value was declared based on the invoice of the parent company. Reliance is places in the following declarations:

• Sumeet Exports (India) vs. Commissioner of Customs (I), Nhava Sheva: 2019 (370) E.L.T. 423 (Tri.-Mumbai),

• Shree Ganesh International vs. CCE, Jaipur: 2004 (174) E.L.T. 171 (Tri-Del.)

• Kriti Sales Corporation vs. Comm. of Cus, Faridabad: 2008 (232) E.L.T. 151 (Tri.-Del.)

• Samsung Electronics Information (I) Pvt. Ltd. vs. CCE New Delhi: 2005 (187) E.L.T. 220 (Tri-Del.)

• Dong-A India Automotive Pvt. Ltd. vs. Commr. of Cus., Chennai: 2006 (206) E.L.T. 252 (Tri.-Chennai).

2.1 The learned counsel further submits that there is no revenue implication in the present case as the goods are exempted and hence, the question of confiscation does not arise. It is also submitted that the value cannot be disregarded without following the due procedure of law and the Chartered Engineer has not provided any calculation which form the basis for the Chartered Engineer's Certificate and by relying on the following judgements submitted that the enhancement of value is to be rejected.

• Tolin Rubbers Pvt. Ltd. Commissioner of Customs, Cochin: 2004 (163) E.L.T. 289 (S.C.)

• Champion Photostat Industrial Corporation vs. Commr. of Cus., ICD, TKD, New Delhi: 2021 (376) E.L.T. 394 (Tri-Del.)

• Commissioner of Customs, Cochin v. Print Tools Corporation: 2019 (366) E.L.T. 326 (Tri-Bang.)

• A.N. Impex v. Commissioner of Customs (Port), Kolkata: 2013 (287) E.L.T. 197 (Tri-Kolkata)

3. The learned Authorized Representative (AR) for the Revenue reiterated the finding of the Commissioner (Appeals).

4. Heard both sides. At Para 7 of the impugned order, the Commissioner (Appeals) notes that the appellant had submitted the proforma invoice of the supplier and requested for First Check before the assessment of the impugned goods. During the examination of the goods by the Chartered Engineer, it was noticed that the capital goods were used goods and the declared value was found to be Rs.1,08,29,077/- as estimated by the Chartered Engineer as against the declared value of Rs.86,64,335/-. There is no doubt that the appellant being 100% EOU, valuation place a significant rule as it has a direct bearing on the export obligations to be discharged. It is also on record that the appellant had declared the value as shown in the proforma invoice as declared by their supplier. After inspection, since the goods were found to be used goods and the value was enhanced by the Chartered Engineer, they accepted the enhanced value which will have an impact on their export obligation. As rightly claimed by the appellant there is no duty liability and the declared value was based on the proforma invoice, hence there was no mis-declaration as such. Therefore, I do not find any suppression or mis-declaration by the appellant so as to confiscate the goods. Hence, the order of confiscation is set aside along with the penalty imposed on the appellant under Section 112(a)(ii).

5. In view of the above discussion, the appeal is allowed.

