(2023) 12 CESTAT CK 0024

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 41972 Of 2014

M/S. Balaji Building Technologies (P) Limited — APPELLANT

Vs

Commissioner Of Customs (Import) — RESPONDENT

Date of Decision : 13-12-2023

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

Citation : (2023) 12 CESTAT CK 0024

Hon'ble Judges : P. Dinesha, Member (J);M. Ajit Kumar, Member (T)

Bench : Division Bench

Advocate : L. Gokulraj, Rudra Pratap Singh

Final Decision : Dismissed

Judgement

P. Dinesha, Member (J)

1. This appeal is filed by the importer against Order-in-Appeal C.Cus. No. 905/2014 dated 12.06.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. The importer filed Bill-of-Entry No. 4312798 dated 10.01.2014 upon import of goods described therein as "Extra Clear Glass". On account of glitch in the EDI system, the said Bill-of-Entry could not be cleared under RMS and therefore, was referred back to the Appraising Group for assessment. During manual examination by the examining officers, it appears that the goods carried clear description as "Clear Float Glass Thickness 12mm, country of origin – China".

3. It appears that upon being pointed out, the importer requested for adjudication without Show Cause Notice and without personal hearing.

4. Accordingly, Order-in-Original No. 24049/2014 dated 20.02.2014 came to be passed. The said order has placed reliance on the observations of the examining parties and the examination report, and finally concluded that the imported goods were nothing but Clear Float Glass which attracted Anti-Dumping Duty,

ordered confiscation of the same with an option of redemption fine, apart from imposing penalty under Section 112(a) of the Customs Act, 1962 and Anti-Dumping Duty of Rs.3,86,682/-.

5. Aggrieved by the said order, it appears that the importer filed an appeal before the first appellate authority. The first appellate authority per Order-in-Appeal C.Cus. No. 905/2014 dated 12.06.2014, however, having rejected their appeal, the present appeal has been filed before us.

6. Heard Shri L. Gokulraj, Ld. Advocate for the appellant and Shri Rudra Pratap Singh, Ld. Additional Commissioner for the Revenue. The only issue to be decided by us is whether the impugned order is sustainable.

7.1 We have gone through the documents placed on record; copy of the Bill-of-Entry reveals the description as: "12MM Extra Clear Glass", whereas the Order-in-Original reveals that what was imported was "Clear Float Glass" as described on the goods itself and that the country of origin as available on the goods was China. The above manual examination report by the Shed Officers of the Department was never questioned by the importer, who opted not to participate in the personal hearing, and also requesting for the non-issuance of Show Cause Notice.

7.2 We find that by its letter dated 10.02.2014, the appellant has himself requested for the non-issuance of Show Cause Notice with the further request to adjudicate the case without personal hearing as well.

By this, the appellant avoided the further investigation/examination by the authorities and the original authority, having no other option, proceeded to conclude the adjudication based on the unrebutted examination report of the officers of the Revenue. This also makes it clear that the appellant did not raise any objection at the first available instance by raising protest to the observations of the manual examination officers. Later on, also, the appellant chose not only not to seek for any Show Cause Notice, but also opted not to participate in the personal hearing as well, thereby putting in black-and-white its explanation. Hence, at the threshold we are of the prima facie view that the authorities were justified in going by the examination report of the Shed Officers.

8.1 The Ld. Advocate has referred to one of the letters dated 03.02.2014, wherein the appellant appears to have maintained that what was imported by the cargo was Extra Clear Glass, which was also based on the commercial invoice of the foreign supplier, but however, other than a mere claim, no other supporting evidence has been placed on record. The supplier is an interested party just like the importer and hence, a supporting document in the form of an expert opinion was required to be filed by the importer to establish the fact that what was imported was Extra Clear Glass and not Clear Float Glass. When the Revenue doubted the description based on the manual/physical inspection of goods and description mentioned on the goods, the Bill-of-Entry and the commercial invoice would amount to self-serving documents and hence, an independent report of an expert would have come to the aid of the appellant.

8.2 The appellant having not done so, we do not find any lacuna in the findings of the lower authorities and hence the order of the first appellate authority is required to be upheld which we hereby do.

9.1 The Ld. Advocate invited our attention to the hypothetical duty liability as worked out by him, to urge that what was paid by the appellant was far more than the duty liability if the value as suggested by the Department were to be adopted.

9.2 Even if the duty paid by the appellant were more than what was demanded, it would not in any way affect the classification as such. There was a fundamental dispute as regards classification since clear float glass attracted ADD; the Revenue went by the first check/personal inspection of the cargo and the description label on the goods. The same was adopted since it was never challenged.

The appellant, by raising a ground that the duty was paid for Extra Clear Glass, is indirectly trying to justify its classification which cannot be permitted. When there were clearly no doubts in the minds of the Revenue as to what was imported was float glass, then necessary consequences ought to follow, inasmuch as the liability to ADD cannot be overlooked just because the appellant has been magnanimous in remitting more duty. If the said theory is accepted, then the same would affect the classification itself! Hence, the theory of the appellant cannot be accepted as the same lacks any merit.

10. Insofar as the Anti-Dumping Duty levy is concerned, the appellant-importer has given a working wherein it has claimed that what was paid as duty by it was more than what was hypothetically worked out by the Revenue, but however, we cannot get into the arithmetics of the same since, the scope of the appeal is limited.

11. In that view of the matter, we do not find any merit in the case of the appellant for which reason we dismiss the appeal.