(2015) 11 CESTAT CK 0015

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 52522, 52523 Of 2015

M/s Biotavia Labs Pvt. Ltd. And Anr. APPELLANT

Vs

CC (Preventive), New Delhi RESPONDENT

Date of Decision : 18-11-2015

Acts Referred:
Customs Act, 1962 — Section 28, 28(2), 110, 112, 125

Citation : (2015) 11 CESTAT CK 0015

Hon'ble Judges : R. K. Singh, Technical Member;Sulekha Beevi, C.S., J

Bench : Division Bench

Advocate : G. K. Sarkar, Amresh Jain

Final Decision : Allowed

Judgement

1. The above appeal is filed challenging the order passed by Commissioner of Customs (Preventive), which ordered the confiscation of goods, imposed

redemption fine and also imposed penalties under section 112 of the Customs Act 1962, on the appellant company and the director alleging evasion of

Anti Dumping Duty.

2. Brief facts are as under:

3. The appellant company is engaged in the import and trading of various pharmaceutical drugs including Ascorbic acid. The appellant imported

Vitamin - C (ascorbic acid) and filed Bill of Entry dated 03/03/2015 through their CHA. The bill of entry was assessed by the Department on

04/03/2015 and the appellant paid the duty so assessed through e-payment. It is the case of the department that Anti-Dumping Duty was leviable for

the goods during the relevant period and the appellant failed to pay the anti-dumping duty for the import. The goods were seized under section 110 Of

Customs Act, 1962. Further that, appellant had earlier imported the same goods vide bill of entry dated 07/01/2015 and had not paid ADD for the said

consignment also. The appellants on receiving information through their CHA, that they are liable to pay ADD, paid ADD for both the consignments

along with applicable interest and requested for release of the present consignment. The goods were not released. The impugned order was passed

confiscating the goods valued Rs.86,11,532/- with an option to redeem the goods on payment of redemption fine of Rs.30 lakhs under Section 125 of

the Customs Act 1962. In the said order, the Commissioner besides ordering appropriation of ADD and interest that was already paid by the appellant,

imposed penalty of Rs.20 lakhs on the appellant company and separate penalty of Rs. 50 lakhs on the director under Section 112 of the Customs Act,

1962. Being aggrieved, the appellant is before the tribunal.

4. The Learned Counsel appearing for the appellant Shri G. K. Sarkar, submitted that there was no deliberate evasion of duty on the part of the

appellant. The appellant failed to pay the duty only because the appellant was not aware of the fact that ADD is leviable for the goods, viz; Ascorbic

Acid imported from China during the relevant period. On receiving information about the leviability of ADD, the appellants immediately paid the duty

for the present consignment and earlier one also alongwith applicable interest. He argued that the facts surrounding the case would itself prove that

the failure to pay ADD was not due to any deliberate act to evade payment of duty. The goods were duly assessed and cleared by the proper officer

without levy of Anti- Dumping Duty and the system of the Department also did not show any levy of such duty. This is evidenced from the check list

of Bill of entry generated by the system. Therefore the appellant paid the duty online as assessed without levy of ADD as the system of the

department did not show ADD under Compulsory Compliance Requirement (CCR) also. While paying the duty, the appellant was guided by the

finalization of Bill of Entry by the appraising officer and there was no reason for the appellant to doubt the assessment so made. Thereafter the

appellant was informed through CHA about leviability of Anti-Dumping Duty and immediately the appellant paid the same along with applicable

interest and informed the same vide letter dated 06/03/2015.Though the appellant paid the entire duty the goods were not released. The appellant then requested to warehouse the consignment vide letter dated 23/03/2015. Thereafter vide letter dated 26/05/2015 appellant requested to treat the

proceedings as concluded as per provisions of Section 28 of the Customs Act, since the appellant had already paid the duty along with interest. But the

Commissioner failed to heed to the request of the appellant and proceeded to pass the impugned order confiscating the goods and imposing redemption

fine and penalties. It is submitted that the description, value, quantity etc, declared by the appellant while filing Bill of Entry were correct and the

Department has no dispute regarding these aspects. So also the goods imported are not prohibited goods. The omission to pay ADD happened only

because the appellant was not aware that the goods attracted ADD. The counsel prayed that as the appellant has already paid the duty and interest,

the goods may be released to the appellant and the penalties and redemption fine imposed be set aside.

5. The Learned DR, defended the impugned order and reiterated the findings therein. It was argued that the appellant did not pay Anti-Dumping Duty

on both the consignments imported vide bill of entry dated 07/01/2015 and 03/03/2015. The ADD Notification No.67/2009 dated 16/06/2009 was

followed by notification dated 11/06/2014 reviving/extending the period of imposing anti-dumping duty on vitamin C imported from China. He argued

that the statement of the Director of the appellant company that he did not know the levy of anti-dumping duty on specified goods, Ascorbic Acid, is

only an attempt to escape liability.

6. We have heard the rival submissions and perused the records.

7. Admittedly the appellant has paid the ADD along with interest and is now aggrieved by the confiscation of goods, imposition of redemption fine and

penalties. The only question to be looked into is whether the failure to pay the ADD was due to any deliberate act to evade payment of duty. The

ADD Notification No.67/2009 dated 16/06/2009 stipulated validity for 5 years unless revoked, superseded or amended from the date of notification.

The notification was to lapse on 15/06/2014 if not revived. The notification 11/6/2014 extended the period. According to the appellants they were not

aware of this further notification dated 11.06.2014 extending the period of the notification. The omission to pay the duty was only due to the ignorance

of this fact and it was not willful. On examination of records, the submission of the appellant that the check list of the Bill of entry generated by the

system did not show levy of ADD is correct. The appellant made online payment of the duty so assessed by officer. On being informed about the levy

of duty, the appellant has immediately paid the ADD not only for the present consignment but also for the earlier consignment with interest. The

director of the Company Shri sameer Goyal has deposed that the omission occurred only because he was not aware that the goods attracted anti

dumping duty. Further sub- Section (2) of Section 28 of the Customs Act, 1962 provides that when duty along with interest is paid no show cause

notice shall be served and no penalty shall be imposed. After hearing the submissions and going through the records we do not find it possible to agree

with the finding of the Commissioner that the failure to pay ADD was due to any deliberate act to evade payment of duty. As evidenced by the

checklist, the bill of entry was finally assessed by the appraiser without levy of anti- dumping duty. The appellant paid such duty as per this assessment

and had no reason to doubt that any further duty was payable. On intimating that anti-dumping duty was also payable, the appellant has immediately

made the payment of ADD, of not only of this consignment but also of the earlier consignment imported in January 2015. He also paid the applicable

interest. This immediate response of paying entire duty demand along with interest along with the fact that the bill of entry assessed by the appraising

officer did not contain element of anti-dumping duty persuades us to hold that the failure on the part of the appellant was only a bona fide omission.

Further, sub-Section (2) of Section 28 provides that if a person is chargeable to duty or interest and the duty along with interest as ascertained by the

proper officer is paid, then no show cause notice shall be served and no penalties to be imposed. In such circumstances we are of the considered

view, that the confiscation of goods and imposition of redemption fine and penalty is totally unjustified. The impugned order is therefore not

sustainable.

8. In the result, we set aside the impugned order and the appeals are allowed with consequential relief, if any.

(Operative part of the order pronounced in the open court.)

