
(2024) 04 CESTAT CK 0030

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No.40190 Of 2023

M/S. Gayrams Shipping Services

APPELLANT

Vs

Commissioner Of Central Excise

RESPONDENT

Date of Decision : 18-04-2024

Acts Referred:

Customs Act, 1962 — Section 114

Citation : (2024) 04 CESTAT CK 0030

Hon'ble Judges : P. Dinesha, Member (J)

Bench : Single Bench

Advocate : M. Harri Viswanaath, Harendra Singh Pal

Final Decision : Allowed

Judgement

P. Dinesha, Member (J)

1. This appeal is filed by the Customs Broker – Appellant against the Order in Original No. TUT-CUSTOM-PRV-COM- 07/2023, dated 21.02.2023 passed by the Commissioner of Customs, Tuticorin.

2. Shri M. Harri Viswanaath, Ld. Advocate appeared for the appellant and Shri Harendra Singh Pal, Ld. Assistant Commissioner defended the impugned order.

3. I have considered the rival contentions, have carefully perused the documents placed on record and also gone through the judicial precedents relied upon during the course of arguments. The only issue that arises for my consideration is, "whether the revenue is justified in imposing penalty under CBLR 18 (1) of CBLR 2018 on the appellant?"

4. The facts are not in dispute, the exporter was alleged to have availed undue benefit under Merchandise Exports from India Scheme (MEIS) in the export of safety matches by misclassifying the same under CTH 36050090 as against CTH 36050010, by which the exporter had availed benefit by way of reward of 7% MEIS as against 3% MEIS. The appellant being the customs broker who had

facilitated the filing of documents relating to export on behalf of their exporter client, was alleged to have inter alia violated regulations 10 (d) and 10 (e) of CBLR 2018 and thereafter, a Show Cause Notice was issued to the appellant. The appellant appears to have filed its reply to the Show Cause Notice and also offered its explanation before the Inquiry Officer as well, based on which the Inquiry Officer submitted his inquiry report dated 28.11.2022. Based on the said inquiry report, the Original Authority namely the Commissioner of Customs afforded an opportunity of being heard to the appellant and after considering the arguments, both written as well as verbal, of the appellant, has found that the appellant had indeed violated Regulations 10(d) & 10 (e) *ibid* but, however, he having considered the fact that the appellant did not gain any benefit, chose to impose a penalty of Rs.25,000/- under regulation 18 (1) *ibid*. It is against this order and the penalty that the present appeal has been filed before this Forum.

5. The Ld. Advocate would submit at the outset that in a more or less similar case, this very Chennai Bench as in the case of M/s. Max Miller Agencies, Tuticorin Vs. The Commissioner of Customs, Tuticorin vide Final Order No.40099/2024, dated 30.01.2024 deleted similar penalty imposed on the customs broker.

6. Per contra, Shri Harendra Singh Pal, Ld. Assistant Commissioner having relied on the findings of the Original Authority, has also relied on an order of Chennai Bench in the case of M/s. Seaswan Shipping and Logistics, Tuticorin Vs. The Commissioner of Customs, Tuticorin vide Final Order No.40008/2024 dated 03.01.2024.

7. I have gone through both the orders relied upon by the rival parties; in the case of M/s. Seaswan Shipping and Logistics, the issue relates to the penalty under Section 114 of the Customs Act and hence, the ratio of said order is not squarely applicable to the facts of this case although the penalty under Section 114 has been upheld on the customs broker for alleged violations therein. In the case of M/s. Max Miller Agencies (*supra*) this Bench has considered an almost similar issue and after considering several judicial pronouncements has found it proper to delete penalty imposed for violations of regulation in 10 (d) and 10 (e).

The relevant observations read as under:

"7. After considering the submissions of both the parties and perusal of materials on record, I find that the show cause notice was issued to the appellant alleging incorrect classification filed by colluding with the exporter intentionally by the appellant. Further, I find that the stand of the appellant from the very beginning was that CTH adopted by the appellant was based on the assessment practice for Match Skillets made out of white board. The appellant has also given justification for the said classification. Further, I find that the assessing officers were well aware of the classification and they allowed the said classification without any objection. The respondent did not raise any objection to the adopted classification even though the description of the export goods was correctly

declared. Further, I find that it is not only the appellant who has followed this classification with regard to impugned goods rather other exporters were also adopting the same classification which was followed at Tuticorin port during the period from April 2015 to October 2020. Further, I find that even DGFT authorities who are in charge of the Foreign Trade Policy have also allowed the MEIS benefits which also proves that there was nothing wrong in the classification of the impugned goods. Further, I find that learned Commissioner in the impugned order has not followed Advisory No.1/2002 dt. 29.12.2002 issued by the Chief Commissioner of Customs, Mumbai advising the Customs officers not to issue show cause notice to Customs Brokers for violation of CBLR, 2018 in cases involving interpretative disputes regarding classification, availment of benefits of exemption notification and valuation.

8. I also find that the Commissioner in the impugned order has held that the appellants are not directly benefited by their contravention hence there is no mens rea on the part of the appellant and therefore the imposition of penalty on the appellant for violation of Regulation 10 (d) and 10 (e) of CBLR 2018 is not warranted. Further, I find that it is settled law that the classification is a question of law and cannot be treated as misdeclaration or misstatement. It is relevant to reproduce the relevant findings of the Tribunal in the case of Shree Ganesh International Vs CCE - 2004 (174) ELT 171 (Tri.-Del.) wherein the Tribunal has held as under :

"The appellants have made the declaration on the Bills of Entry on the basis of documents received by them from their foreign suppliers. The test report of foreign suppliers clearly mentions that the goods are non-texturised fabrics. They have also claimed that a similar consignment imported by them from the same supplier had earlier been cleared as non-texturised polyester fabrics which gave them the bona fide belief that the present consignment would also be of non-texturised variety. Accordingly, it cannot be claimed by the Revenue that the Appellants have deliberately misdeclared the goods with a view to avail the benefit of lesser rate of duty. Consequently, confiscation and redemption fine as well penalty is set aside"

9. Similarly in the case of CCE Visakhapatnam Vs Smithkline Beecham Consumer Health Care Ltd. reported in 2004 (167) ELT 225 (Tri.-Bang.), the Tribunal held in para-3 as under :

3. We have perused the records and heard both sides. The learned Counsel representing the assessee submits that the issue is no more res integra. He relies on the decision of this Tribunal in the case of S. Narendra Kumar & Co. v. CCE, Mumbai-II - 2003 (156) E.L.T. 1001 wherein the Tribunal held that no penalty is imposable for filing incorrect classification. The learned Counsel has also referred to many other decisions to the same effect. A classification declaration indicates the classification, which the assessee proposes to adopt. He may be in error. Revenue authorities are at liberty to consider the proposed classification and to order payment of duty according to the changed correct

classification. That is the whole purpose of requiring an assessee to file a classification declaration. In proposing an erroneous classification, the assessee commits no offence, justifying imposition of penalty. This is the view taken by the learned Commissioner. That view is legally correct.”

10. In view of my discussions above and by following the ratio of above decisions cited supra, I am of the considered opinion that once it has been observed by the learned Commissioner that there is no mens rea on the part of the appellant then in that case imposition of penalty of Rs.25,000/- for violation of Regulation 10 (d) and 10(e) of CBLR 2018 is not sustainable in law. Therefore, I set aside the penalty imposed on the appellant by allowing the appeal of the appellant. Appeal is accordingly allowed.”

8. In view of the above, I deem it proper to delete the penalty imposed on the appellant and therefore, the impugned order calls for interference. Resultantly, the impugned order is set aside and the appeal is allowed.