(2014) 10 CESTAT CK 0001

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 177 Of 2008

M/s. Goraya Straw Board Mills Pvt. Ltd. APPELLANT

Vs

Commissioner Of Central Excise, Meerut II RESPONDENT

Date of Decision : 01-10-2014

Acts Referred:
Customs Act, 1962 — Section 112

Citation : (2014) 10 CESTAT CK 0001

Hon'ble Judges : Archana Wadhwa, J;Rakesh Kumar, Technical Member

Bench : Division Bench

Advocate : Rishabh Jain, A Jain

Final Decision : Allowed

Judgement

1. The challenge in the present appeal is to penalty of Rs.7 lakhs imposed upon the appellant in terms of provisions of Section 112 of the Customs Act,

1962.

2. As per facts on record, the appellant is manufacturing unit engaged in the manufacture of paper and paper board. As waste paper is one of the raw

materials, they imported the same from USA and filed a bill of entry dated 1.9.2006. On examination, out of total weight of 121.84 MT, 29.96 MT was

found to be â??plastic waste of road sweepingsâ?? and the rest 91.88 MT was â??waste paper collected as road sweepingâ??. Inasmuch as the

plastic contents in the consignment which were sent to Central Institute of Plastic Engineering and technology, Lucknow were found to be toxic

substance and inasmuch as the percentage of the same was found to be on the higher side, proceedings were initiated against the appellant for

confiscation of the goods as also for imposition of penalty upon them. The original adjudicating authority absolutely confiscated the plastic contents of the consignment and allowed the appellant an option to redeem the waste paper content on redemption fine of Rs.5 lakhs. He also imposed penalty of

Rs.7 lakhs upon the appellant. The said order of the Additional Commissioner was upheld by the Commissioner (Appeals). Hence, the present appeal.

3. The appellantsâ?? contention is that they had ordered for import of waste paper and there is no evidence on record that toxic plastic content found

in the consignment were sent by the exporter with the knowledge of the appellant. Inasmuch as the appellants were not a party to the consignment of

the plastic materials, they should not be penalized. He further submits that appellant is a paper manufacturing unit and has no use for the plastic.

5. On the other hand, Revenue has referred to the clause 7 of the Sale Contract entered into between the appellant and the foreign supplier, which is

to the effect that â?" â??FINAL LOAD POINT QUALITY INSPECTION FEE FOR SELLERâ??S ACCOUNT. QUALITY SURVEYORS TO

BE MUTUALLY AGREED UPON.â? From this, Commissioner (Appeals) has observed that inasmuch as there was a provision for prior inspection

of the goods by the surveyor and if it was the intention of the importer to only import waste paper, they were very well equipped for that. If there was

no malafide intention, there is no reason as to why the supplier passed the toxic waste of plastic along with waste paper.

6. We find no merit in the above observation of the Commissioner (Appeals). Merely because there was a checking clause by quality surveyor, the

same does not lead to indicate any malafide on the part of the importer. Further, we have to keep in mind that quality inspection and certification is

done at the exporterâ??s end and the importer in India has no hand in the same. Further, it is also on record that waste paper was also in the nature

of road sweeping as also toxic plastic substance. In the absence of any evidence on record to reveal that the appellant was a party to the presence of

such plastic contents in the consignment of waste paper, the Revenuesâ?? finding are based upon assumption and presumptions for which the

appellant cannot be penalized.

7. Inasmuch as the appellant is not interested in clearance of the goods, we set aside the penalty imposed upon him by modifying that part of the

impugned order only. The appeal is allowed to that extent only with consequential relief to the appellant.

(PronouncedÂ in the open court)