(2023) 07 CESTAT CK 0017

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Early Hearing Application No.20031 Of 2023, Customs Stay Application No.20036 Of 2023, Customs Miscellaneous Application No.20072 Of 2023 In Customs Appeal No.20125 Of 2023

M/S K Kiran Tyres — APPELLANT

Vs

Commissioner Of Customs, Bangalore — RESPONDENT

Date of Decision : 13-07-2023

Acts Referred:

Customs Act, 1962 — Section 112, 112A

Citation : (2023) 07 CESTAT CK 0017

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

Bench : Single Bench

Advocate : Bharat Chugh, Rajesh Shastry, Sanyat lodha

Final Decision : Allowed

Judgement

P.A. Augustian, Member (J)

1. When the miscellaneous petition for Early Hearing, Stay petition and application for amendment of stay petition came up for hearing, the learned Counsel for the appellants submitted that the matter was considered by the Division Bench earlier and considering the monetary limit, the matter was transferred for the consideration of Single Member. Learned counsel requested for final hearing today. Learned D.R. appearing for the Respondent submitted that he has got no objection in considering the appeal on merit today. Considering the same, appeal is taken up for final hearing. The petition for early hearing, Stay petition and application for amendment of stay petition are disposed as infructuous.

2. The learned counsel for the appellant submitted that the issue in the present appeal is regarding confiscation of imported goods and imposition of fine and penalty on the appellant. When appellant made inquiry regarding legal import of used tyres, as advised by the consultant, appellant filed petition for obtaining

special import license from Director General of Foreign Trade (DGFT) for import of secondhand tyres from Dubai. Thereafter, the appellant received import license through their consultant in December 2018. Based on the license, appellant imported two containers of used tyres and filed Bill of Entry No.2040766 dated 13.02.2019 for clearance of the said goods for home consumption. The goods were cleared after assessment based on the survey report obtained by the customs approved Chartered Engineer. Thereafter, appellant imported second consignment under Bill of Entry No.2555443 dated 25.03.2019 and Customs Authority conducted inquiry regarding genuineness of the DGFT Special Import License produced by the appellant. As part of the investigation goods were detained and during the investigation it was observed that the license produced in support of the import is forged. On subsequent investigation, the consultant Shri Ravi Shekhar Jha admitted that he himself has fabricated the license and statement was recorded before the learned Magistrate also. FIR was lodged by the appellant herein and the said Shri Ravi Shekhar Jha was arrested and remanded to judicial custody. In the meantime Customs Department also conducted investigation and filed criminal complaint and the crime was registered as Crime No.110/2019 before the Hon'ble Court of 2nd ACJM, Bengaluru district. However, as per the Police report, the appellant was exonerated from the crime of committing any fraudulent activity. The proceedings under Customs Act, 1962 initiated by the respondent is concluded by issuing Show Cause Notice dated 26.04.2019. In the mean time, appellant requested for provisional release of goods. When there was no response to the request for provisional release, appellant filed Writ Petition No.24892/2019 and 24726/2019 before the Hon'ble High Court of Karnataka and Hon'ble High Court directed the Department to release the goods provisionally on furnishing bond equal to the value of the goods along with the bank guarantee on 25% of the value of the goods. The appellant complied by the said conditions and goods covered under Bill of Entry No.2555443 dated 25.03.2019, 4570996 and 4571039 both dated 20.08.2019 were released.

3. On completion of adjudication proceedings, Adjudicating Authority vide Order-In-Original dated 14.03.2022 ordered confiscation of the goods and imposed redemption fine of Rs.18,72,000/- and penalty of Rs.3,78,000/-. Aggrieved by the said order, appellant filed appeal before Commissioner (Appeals) and Commissioner (Appeals) dismissed the appeal. Aggrieved by the said order present appeal is filed.

4. Learned counsel for the appellant submitted that as per the evidence available on record, it is an admitted fact that appellant is not involved in alleged fraudulent activity of preparing import license and only on bona fide believe regarding the genuineness of license, goods were imported. Learned counsel further submitted that the appellant is a victim and has been duped by the consultant Shri Ravi Shekhar Jha and criminal proceedings are pending before the court of law. The learned counsel further submitted that without any admissible evidence or allegations, the Commissioner (Appeals) has considered

the past record of appellant while dismissing the appeal filed by the appellants.

5. The learned counsel also retreated the ground of appeal and relied on the Final Order issued by this Tribunal in the case of M/s Baby Marine Seafood Retail Pvt. Ltd. V/s Commissioner of Customs, Cochin in Customs Appeal No.20401 of 2020 having Final order No.20117 of 2021 dated 26.04.2021, M/s Allen Bradely India Ltd. V/s Collector of Customs having Order No.A/448/1991-NRB in Customs Appeal No.2638 of 1990 dated 12.08.1991 and also in the case of M/s Agarwal Industries Corporation Ltd. V/s The Commissioner of Customs in Customs Appeal No.20172 of 2015 dated 27.01.2020 and submitted that imposing fine & penalty on appellant is arbitrary and unsustainable. Regarding loss and prejudice caused to appellant, it is submitted that the goods were detained since 25.03.2019 and only after the directions by the Hon'ble High Court vide order dated 24.07.2019, it was released. Thus appellant also suffered huge financial loss due to delay in clearance of goods.

6. The learned D.R. reiterated the findings given by the Adjudication and Appellate Authorities and submitted that there is no reason to show leniency on appellant since he is the beneficiary of the fraud though conducted by the consultant on his behalf.

7. I have considered the submissions made by both the sides. The reliance of the appellant in the matter of M/s Baby Marine Seafood Retail Pvt. Ltd. (Supra), this Tribunal set aside the order of redemption fine and penalty imposed by the Adjudication Authority on entirely different circumstances and ratio of the said finding is not applicable in appellant's case. Similarly in the matter of Allen Bradley India ltd. (Supra), this Tribunal has set aside the fine and penalty imposed by the Adjudicating Authority and permitted the appellant to re-export the goods. Similarly in the matter of Agarwal Industries Corporation Ltd.(Supra) omission on the part of the appellant was regarding the mis-declaration of the country of origin and subsequently the appellant had taken effective steps and cleared the goods on furnishing license for clearance of goods. In the present case, there is no evidence to substantiate the allegations regarding involvement of appellant in producing fraudulent documents for clearance and adjudication authority categorically stated that appellant was not knowingly involved in the creation of false DGFT license. Thus appellant can be treated only as a victim of fraud committed by the co-noticee Shri Ravi Shekhar Jha. For that reason, no penalty can be imposed on him under Section 112 A of the Customs Act, 1962. Regarding redemption fine, thought the appellant is not involved in the fraudulent activity, the goods imported by the appellant is illegally imported without valid license and for that reason, goods are liable for confiscation. There is no allegation of undervaluation and also there is no finding regarding the margin of profit earned by the appellant through such import. The goods were detained since 25.03.2019 and only after the directions by the Hon'ble High Court vide order dated 24.07.2019, it was released. Thus the appellant had faced financial loss due to delay in clearance of goods.

8. Considering the facts and circumstances of the case and also considering the fact that the goods are not prohibited to import, I am of the view that redemption fine of Rs.5 lakhs is reasonable for the omission on the part of appellant to produce valid import license for clearing the goods. Thus appeal is partially allowed. Order of confiscation is upheld. However, the redemption fine imposed by the Adjudication Authority is reduced to Rs. 5 lakhs and penalty imposed to the appellant under Section 112 of the Customs Act, 1962 is set aside.

