(2021) 10 CESTAT CK 0007

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Early Hearing Application No. 00278 Of 2013, Customs Miscellaneous Application No. 40289 Of 2019, Customs Appeal No. 00129 Of 2012

M/s. Subburaj Spinning Mills Private Limited	APPELLANT
Vs	
Commissioner Of Central Excise	RESPONDENT

Date of Decision : 05-10-2021

Acts Referred:

Customs Act, 1962 — Section 3(1), 28(1), 72
Central Excise Act, 1944 — Section 11A(1), 11AB, 11AC
Central Excise Rules, 2002 — Rule 25Insolvency and Bankruptcy Code, 2016 — Section 31(1), 30(2)

Citation : (2021) 10 CESTAT CK 0007

Hon'ble Judges : Sulekha Beevi C.S., J;P. Anjani kumar, Technical Member

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The appellants were engaged in the manufacture of Cotton Yarn and were operating under 100% EOU Scheme. They opted to exit the scheme, for which the Development Commissioner, MEPZ, Chennai by letter dated 02.01.2008 accorded no objection to them. Upon issue of a letter dated 21.01.2008 by the Central Excise Authorities stating that the appellant had discharged all the Duty liability on imported and indigenous goods on 18.01.2008 and 28.01.2008, the Development Commissioner permitted final exit from 100% EOU status by his letter dated 05.02.2008. The appellants were also permitted to function as an EPCG unit.

2. Officers of the Department visited the unit of the appellant on 05.11.2009 and by a detention memo detained certain imported and indigenous goods which were not included in the list of capital goods submitted by the appellant to the Department for the purpose of de-bonding. Though the appellant vide their letter dated 18.11.2009 applied to the Assistant Commissioner of Central Excise, Tirunelveli Division requesting for a no objection certificate to avail the option of

paying duty under the EPCG scheme as available to them under the Foreign Trade Policy, the Assistant Commissioner vide his reply dated 07.12.2009, turned down the appellant's request stating that exit from the EOU scheme is a one-time option and that after exit from the 100% EOU, the full rate of Customs Duty and Central Excise Duty has to be paid.

3. Thereafter, Show Cause Notice dated 10.06.2010 was issued which culminated in passing of the order impugned herein, wherein the Original Authority confirmed demand of Duty of Rs. 1,06,40,397/- under the proviso to Section 28(1) of the Customs Act read with Section 72 of the Customs Act and proviso to Section 11A(1) of the Central Excise Act, 1944 read with Section 3(1) ibid., together with applicable interest on the above amount of Duty in terms of Section 28AB of the Customs Act and Section 11AB of the Central Excise Act. The Original Authority also imposed penalties of Rs.1,06,39,919/- under Section 112(a)(ii) of the Customs Act and Rs. 478/- under Section 11AC of the Central Excise Act read with Rule 25 of the Central Excise Rules, 2002 on the appellant.

4. The miscellaneous application has been filed by the appellant reporting that subsequent to the filing of this appeal, because of financial difficulty, the appellant's case was referred to the National Company Law Tribunal, Chennai in terms of Section 31(1) of the Insolvency and Bankruptcy Code, 2016 for consideration and approval of a Resolution Plan. The National Company Law Tribunal, Chennai has passed an order on 12.03.2019 approving the Resolution Plan filed before it.

5. Learned Counsel Shri S. Murugappan appearing for the appellant submitted that the above fact may be recorded and the appeal be disposed of as abated.

6. Learned Authorized Representative Ms. K. Komathi appeared for the Department.

7. Heard both sides.

8. The order of the National Company Law Tribunal, Chennai in the matter of M/s. Subburaj Spinning Mills Pvt. Ltd. dated 12.03.2019 is placed before us. In paragraph 25 of the order, the National Company Law Tribunal has held that the Resolution Plan is approved and thereafter concluded that the same shall become effective from the date of passing of the order. The relevant portion of the order reads as under:

"21. From the plan approval date, all inquiries, investigation and proceedings, whether civil or criminal, suits, claims, disputes, interests and damages in connection with Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future in relation to any period prior to the plan approval date, or arising on account of implementation of this resolution plan shall stand withdrawn, satisfied and discharged. From the date of approval of the 'Resolution Plan', the Resolution Applicant shall be legally authorised to seek appropriate orders from respective authorities/courts/tribunals for renewal of licences/withdrawal/dismissal or abatement of the proceeding as the case may be.

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24. Thus, the 'Resolution Plan' filed with the Application meets the requirements of Section 30(2) of I&B Code, 2016 and Regulations 37, 38, 38(1A) and 39 (4) of IBBI (CIRP) Regulations, 2016. The 'Resolution Plan' is also not in contravention of any of the provisions of Section 29A. The Resolution Professional has also certified that the "Resolution Plan" approved by the CoCs does not contravene any of the provisions of law for the time being in force. The Compliance Certificate is placed at pages 29 to 32 of the typed set filed with the Application.

25. In view of the above, the 'Resolution Plan' annexed with MA/31/IB/2019 filed in CP/655/IB/2017 is hereby approved, which shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan including Resolution Applicant."

Accordingly, as per the order, from the plan approval date, all proceedings, claims, disputes and interests in connection with the Corporate Debtor (appellant herein) shall stand withdrawn, satisfied and discharged.

9. The miscellaneous application has been filed by the Authorized Signatory of the appellant for having the appeal disposed of by closing the demands, as abated.

10. In view of the above, we therefore dismiss the appeal, as abated. The miscellaneous application is disposed of accordingly.

(Order pronounced in the open court on 05.10.2021)

