(2024) 01 CESTAT CK 0080

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No.40201 Of 2023

M/s.Max Miller Agencies — APPELLANT

Vs

Commissioner Of Customs — RESPONDENT

Date of Decision : 30-01-2024

Acts Referred:
Customs Brokers Licensing Regulations, 2018 — Regulation 10(d), 10(e), 18 (1)

Citation : (2024) 01 CESTAT CK 0080

Hon'ble Judges : S.S. Garg, Member (J)

Bench : Single Bench

Advocate : A. K. Jayaraj, N. Sathyanarayanan

Final Decision : Allowed

Judgement

S.S. Garg, Member (J)

1. The present appeal is directed against impugned order dated 22.2.2023 passed by Commissioner of Customs, Tuticorin whereby the learned Commissioner has imposed penalty of Rs.25,000/- on the appellant under Regulation 18 (1) of the CBLR 2018 for failure to comply with the obligations mandated under Regulation 10 (d) and 10 (e) of CBLR 2018.

2. Brief facts of the present case are that the appellant is a holder of Customs Broker License and had filed 24 shipping bills during the period August 2015 to February 2016 on behalf of the exporter M/s.Rajashree Match Works, Sattur, Virudunagar District who was alleged to obtained excess MEIS benefits by misclassifying ‘Match Skillets’ exported by them under CTH 36050090 instead of under CTH 48192010. Incidentally, classification 36050090 attracts 2% higher rate of MEIS. The excess availment was found by the scrutiny of the data analytics of MEIS scheme by the system. On the allegation that the appellant has colluded with the exporter and filed the shipping bill with incorrect classification intentionally, a show cause notice dt. 2.9.2022 was issued alleging violation of Regulation 10 (d) and 10(e) of Customs Brokers Licensing Regulations 2018 to

show cause as to why (i) Customs Brokers Licensing should not be revoked (ii) Security deposit should not be forfeited and (iii) penalty should not be imposed under Regulation 18 (1) of CBLR 2018. Appellant filed detailed reply dt. 27.09.2022 to the SCN and thereafter Inquiry Officer was appointed who after holding inquiry had filed report dt. 28.11.2022 by concluding that the appellants have contravened Regulation 10 (d) and Regulation 10(e) of CBLR 2018. Thereafter, on the basis of the report of the Inquiry Officer, the learned Commissioner after giving opportunity to the appellant has held that the appellant has violated the provisions of Regulation 10 (d) and 10 (e) of CBLR 2018 but he took a lenient view as the appellant was not directly benefited by their contravention and refrained from revoking their license and also forfeiting the security deposit and only imposed penalty of Rs.25,000/- for violation of Regulation 10 (d) and 10 (e) of CBLR 2018 . Hence the present appeal.

3. Heard both the parties and perused the records.

4. Ld. Counsel appearing for the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that there was justification for classification of 'Match Skillets' under CTH 36050090 due to the striking surface coated with combustible preparation. He further submits that the appellant could not have given any advice against the assessment practice followed by the department; the assessing officers even though they well knew that the goods exported were 'Match Skillets' made out of white board, did not raise any objection. He further submits that the draw back schedule also adopts this classification under Heading 3605 since 2005. Hence there was no need for giving any advice to the exporter under Regulation 10 (d) and for the same reason there was no failure to exercise due diligence in imparting correct information to their client under Regulation 10 (e). He further submits that in the same Custom House the other exporters had also adopted the same CTH and the assessment officers who processed the shipping bills did not raise any objection relating to the CTH adopted at the time of export and there is no allegation that there was any misdeclaration of description of the export goods. Therefore, in view of these, appellant could not be held to have violated Regulation 10 (d) and 10 (e) and therefore the penalty imposed on the appellant is liable to be set aside. He further submits that learned Commissioner has not discussed or countered any of his reply and submissions in the Order-in-Original and he in fact shielded the assessment officers who processed the shipping bills and did not raise any objection to the CTH of 36050090 of the exported goods even though there was no allegation of misdeclaration of description. He further submits that he has only followed assessment practice of Tuticorin export assessment in adopting 36050090 for the match skillets made out of white board exported under shipping bills filed during the period from April 2015 to October 2020. Hence there was no question of giving advice against the assessment practice followed by the respondent. He also submits that show cause notice was issued after more than 2 years alleging misclassification with intention. He also submits

that the DGFT authorities who are in charge of implementing Foreign Trade Policy has also allowed the MEIS benefits claimed under HS code 3605 00 90 and in view that imposition of penalty of Rs.25,000/- on the appellant is not legally sustainable as the appellant has not committed any wrong in filing the shipping bill which was allowed by the assessment and examination officer and also by DGFT authorities.

5. Ld. Counsel took me through Regulation 10 (d) and 10 (e) and submitted that in the facts and circumstances of the case, there is no non-compliance of any provisions of the Customs Act by the exporter and hence there was nothing to bring to the knowledge of the of Deputy Commissioner / Asst. Commissioner of Customs and consequently, there was no question of contravention of provision of Regulation 10 (d) of CBLR 2018. He also referred to the Advisory No.01/2022 dt. 29.12.2002 issued by the Chief Commissioner of Customs, Mumbai wherein it has been clearly advised that the officers engaged in the show cause notice issued on the basis of audit should be advised not to invoke violation of provisions of CBLR, 2018 and make the Customs Broker co-noticee in cases involving interpretative disputes regarding classification, availment of benefits of the exemption notification and valuation. He further submits that in the impugned order the Commissioner in para-31 has clearly given a finding that the appellants are not directly benefited by their contravention and hence there was no mens rea on the part of the appellant. He further submits that it well settled law that classification is a question of law and cannot be treated as misdeclaration or misstatement. For this submission, he relied upon in the case of Shree Ganesh International Vs CCE – 2004 (174) ELT 171 (Tri.-Del.). He also relied upon the following decisions :

(1) Northern Plastic Ltd. Vs CCE 1998 (101) ELT 549 (SC)

(2) Prabhu Steel Industries Ltd. Vs CCE Nagpur 1997 (95) ELT 164 (SC)

(3) Sarabhai M. Chemicals Vs CCE Vadodara 2005 (179) ELT 3 (SC)

6. On the other hand, Ld. A.R reiterates the findings in the impugned order.

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.

