(2021) 12 CESTAT CK 0011

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 85400 Of 2019

Nanda Glass Industry APPELLANT

Vs

Commissioner Of Customs (NS-III) RESPONDENT

Date of Decision : 03-12-2021

Acts Referred:
Customs Act, 1962 — Section 28(4)

Citation : (2021) 12 CESTAT CK 0011

Hon'ble Judges : Ashok Jindal, J;C.J. Mathew, Technical Member

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The appellant is in appeal against the impugned order wherein Anti Dumping duty has been demanded in terms of Notification No. 48/2014-

Customs (ADD) dated 11th December 2014.

2. The facts of the case are that the appellant filed two bills of entry declaring the goods as float glass of 3.8 mm thickness imported from Saudi

Arabia and paid duty accordingly without levy of anti dumping duty. During the course of examination of the said goods, thickness was measured and

the same was found to be between 3.73 mm and 3.86 mm. As per Revenue the said thickness range being covered under nominal thickness of 4mm

as per BIS 14900:2000 which is liable for anti dumping duty in terms of Notification NO. 48/2014-Customs (ADD) dated 11th December 2014 at

serial No.1. Therefore, the goods was seized and allowed to be released provisionally on certain conditions. Further, on scrutiny of the previous import

data of the subject goods, it was noticed that a total of 68 consignment of the subject goods of float glass of thickness 3.8mm were imported by the appellant without levy of anti dumping duty in terms of the above said notification. Therefore, a show cause notice was issued to the appellant do

demand anti dumping duty in terms of Notification No. 48/2014-Customs (ADD) dated 11th December 2014. The matter was adjudicated, the demand

of anti dumping duty was confirmed. Aggrieved from the said order, the appellant is before us.

3. Learned Counsel for the appellant submits that in similar set of facts in the case of Mudit Glassworks Palace the Commissioner of Customs,

Nhava Sheva vide order No.835/2019-20/JC/NS-III/CAC/JNCH dated 20th February 2020 has dropped the proceedings wherein anti dumping duty

was demanded in terms of Notification No. 48/2014-Customs (ADD) dated 11th December 2014 as the imported goods were found as clear float

glass of 3.8mm. Further, in appellantâ??s own case vide order-in-original No. V(30) ICD Loni/2021 dated 30th September 2021 the goods, namely,

clear float glass of 3.8 mm on which anti dumping duty was demanded in terms of Notification No. 48/2014-Customs (ADD) dated 11th December

2014 has been dropped. On merits, he submits that the goods in question were found of thickness in the range of 3.73 to 3.86 mm which is less than

the nominal thickness of 4 mm. Then also, they are out of the purview of anti dumping duty in terms of the above said notification. Therefore, he prays

that the demand is to be set aside.

4. On the other hand Learned Authorised Representative submit that as per the notification duty is to be demanded on clear float glass of nominal

thickness ranging from 4mm to 12mm both inclusive. Nominal thickness and the tolerance as prescribed as per BIS 14900:2000 is 4mm which could

have tolerance Â±0.33mm. Admittedly the goods of the appellant falls within the tolerance limit. Therefore, they are required to pay anti dumping

duty.

5. Heard the parties. Considered the submissions in detail.

6. The facts which is not in dispute is that the actual measurement of the thickness of the goods is between 3.73mm to 3.86mm.

7. The said issue has been examined by the Additional Commissioner of Customs, ICD, Loni in appellantâ??s own case where he had found as

under:

â??6.3 I find that SCN heavily relies upon para 4.1 of 14900:2000 to buttress the point that the thickness and tolerance of float glass of

4.0mm nominal thickness can be + 0.3 mm and using this parameter, it has been concluded that the impugned goods attract Anti-Dumping

duty by adding the tolerance of 0.3mm to the existing 3.8mrn declared thickness (3.8+0.3=4.1111111). By using this analogy, the

contention of the department is that 4.1 mm thickness attracts Anti-Dumping Duty vide Notification No. 48/2014-Customs (ADD) dated

11.12,2014, as amended. There is no iota of evidence forthcoming in the entire SCN suggesting that the impugned goods were of 4.1 mm in

thickness to attract Anti-Dumping duty, it is important to note here that the Examining Officer has never contradicted the goods imported

and cleared as per customs law and provisions. I find that this aspect of physical examination of impugned goods was never brought out in

the SCN and the same has been agitated before me by the importer, CHA in their written submission and also during the course of Personal

Hearing. The point being, when the thickness of the impugned goods was carefully examined and the same was found as per declaration, no

cause of action arises. Thus, the tolerance of thickness has been added in the thickness of impugned goods to bring the same within the

ambit of Anti-Dumping duty, it is noteworthy to make a mention that the thickness can be on the lower side too by deducting the tolerance

limit of mm resulting in the impugned goods being out of the purview of Anti-Dumping duty straight away. Applicability of law is equal in

equal circumstances, it cannot be made applicable as per convenience to suit a particular point. This aspect has not been touched in the

SCN and the SCN proposes only the addition of tolerance limit to attract Anti-Dumping duty.

6.4. I have already re-produced the relevant portion of BIS notification i.e. para 4.1 & 4.1.1. from the plain reading of the said portion, I

find that normally, the goods can be imported in various thicknesses enumerated in Table 1 of the para 4 of the said Notification. However,

if purchaser and supplier agrees, the goods can be imported in any thickness and simultaneously, they have been provided the tolerance

limit. In the instant case, the goods have been imported in thickness 3.8mm and taking the tolerance limit in positive side i.e. +0.3, the same becomes 4.1 mm and department concluded that goods come under the ambit of the above said ADD Notification. I do not agree with this

calculation on following grounds;

i. Each and every word stated in the Statute or notification has to be construed strictly without any liberal interpretation with greater

flexibility. The measurements of 4mm to 12 mm could not be interpreted otherwise or beyond the scope of the Notification no. 48/2014-

Customs (ADD). Therefore, the goods are not subjected to ADD.

ii. The SCN itself depicts that considering the tolerance limit, 'clear float glass' of thickness 3.7 mm to 12.08mm will be included under

thickness of 4mm to 12mm for levy of ADD. ! find that this contention is self-contradictory and as per their inference, thickness of 12.08 mm

has been subsided to become 12.0 mm to bring under purview of ADD. Thus, if the higher thicknesses can be subsided to bring the same

under ADD purview, the same ratio must be applied on each thickness. Thus, the allegation made in the SCN is not sustainable,

iii. The Noticee has submitted that the declared thickness in the import documents is the 'Nominal Thickness' only. In the international float

glass business, only 'Nominal Thickness' is said to be the numeric designation that indicates the approximate thickness of glass including

float glass. Hence by declaring the thickness as 3.8mm, it is indicative that mostly the thickness of the float glass will be 3,8mm only. I am in

agreement with the submission of the appellant.

6.5 I find that the importer has defended their case vehemently on the ground that the Customs Department officials after verifying all the

facts and conditions of the goods and Notification No. 48/2014-ADD have rightly assessed the subject Bills of Entry. They have discharged

the duty in terms of the aforesaid notification 48/2014-ADD, when the declarations, description etc. were made properly, A perusal of the

subject Bills of Entry concerning the impugned transactions indicates the same. In the said Bills of Entry, the importer had declared country

of origin and the goods properly. Thus, there is no mis- declaration on the part of them with respect to the impugned transactions in the self-

assessments. The customs authorities also validated the subject transactions without noticing any mistake or discrepancies. Therefore, it cannot be said that they were wrong or did not pay applicable Anti-Dumping Duty in the said self-assessments. I am in agreement with the

submission of the Noticee Importer. I find that no anomaly was noticed by the department, when the subject Bills of Entries wore cleared by

the customs officers. This is admitted fact in the Show Cause Notice too.

6.6. I find that the demand in the SCN has been made under Section 28(4) of the Customs Act, 1962 by invoking extended period of

limitation. The importer has contested this issue that the extended period of limitation is not invokable in their case. 1 find that the importer

has imported the goods, the everything was declared in the Bills of Entry and accordingly, the same were examined by the shed officers. The

shed officers gave clearance of those bills of entries on finding the same as per declaration. Thus, at this stage, the suppression charge

cannot be invoked against the importer.â??

8. We do agree with the observations made by Learned Additional Commissioner of Customs, Inland Container Depot, Loni, Ghaziabad and the same

view has been taken by Joint Commissioner of Customs, Group III, JNCH, Nhava Sheva in the case of another importer M/s Mudit Glassworks

wherein it has been observed by the adjudicating authority as under:

â??17. It is case of department that the goods attract Anti-Dumping duty in terms of Notification No. 48/2014-Customs (ADD) dated

11.12.2014 as amended and this came to be noticed during the course of Theme Based Audit of the importer by the Post Clearance Audit

section of Jawaharlal Nehru Custom House and the SCN has been issued by invoking the provisions of extended period as envisaged under

section 28(4) of the Customs Act, 1962. The allegation being the central to the whole SCN issued, I deal with the issue at length, in this

connection, I observe that the importer had declared the goods as Clear Float Glass of 3.8mm thickness and the impugned goods declared

vide aforesaid bills of entry were marked for examination and the goods were examined by the Examining Officer. It has been categorically

recorded in the examination report by the Examining Officer that he has verified inter alia thickness as to ascertain that the goods are not

liable for Anti-Dumping duty, When the goods have been examined by him with reference to various parameters including thickness to arrive at a conclusion as to whether the impugned goods attracted Anti-Dumping duty or not and the impugned goods were cleared without

payment of Anti-Dumping duty, she question of invocation of extended period does not arise at all as there is no suppression of facts, wilful

mis-statement on collusion on the part of the importer. This being the reality, it is not open to the department to invoke the clause of

extended period, when no additional material has been brought on record to suggest or infer from the impugned SHOW CAUSE NOTICE .

18. In addition to the aforesaid findings of mine, I also find that the SCN heavily relies upon part 4.1 of BIS 14900:2000 to buttress the

point that the thickness and tolerance of float glass of 4.0 mm nominal thickness can be + or -0.3mm and using this parameter, it has been

concluded that the impugned goods attract Anti-Dumping duly by adding the tolerance of 0.3 mm to the existing 3.8mm declared thickness

(3.8+0.3=4.1mm). By using this analogy, the contention of the department is that 4.1mm thickness attract Ami-Dumping Duty vide

Notification No. 48/2014-Cusioms(ADD) dated 11.12.2014, as amended. In this regard, 1 find that the Theme Based Audit by the Post

Clearance Audit section did not find the impugned goods for physical verification and the same is based on the tolerance of +0.3mm to the

thickness already declared by the importer. There is no iota of evidence forthcoming in the entire SCN suggesting that the impugned goods

were of 4.1mm in thickness to attract Anti-Dumping duty. It is important to note here that the Examining Officer has categorically recorded

in his examination report that the impugned goods were examined carefully with reference to thickness. 1 find that this aspect of physical

examination of impugned goods was never brought out in the SCN but the same has been agitated before me during the course of Persona!

Hearing and the Examination Order and Examining Report stands extracted us above. The point being, when the thickness of the impugned

goods was carefully examined and the same was found as per declaration, no cause of action arises, Be that as it may, the tolerance of

thickness has been added in the case to bring the impugned goods within the ambit of Anti-Dumping duty, it is noteworthy to make a mention

that the thickness can be on the lower side too by deducting the tolerance limit of 0.3 mm resulting in the impugned goods being out of the purview of Anti-Dumping duty straight away. This aspect has not been touched in the SCN and the SCN proposes only the addition of

tolerance limit to attract Anti-Dumping duty.â??

9. Therefore, we hold that as nominal thickness has not been defined in BIS and moreover when actual thickness is available, then nobody can extend

the tolerance to demand anti dumping duty from the appellant. Moreover, for earlier imports, the goods have been verified and allowed to be cleared

by the customs authorities. In that circumstances, we hold that the demand against the appellant is not sustainable and accordingly, the same is set

aside.

10. In the result, the appeal is allowed with consequential relief, if any.

(Pronounced in open court on 03/12/2021)