(2015) 02 BOM CK 0249

In the Bombay High Court

Case No : Customs Appeal No. 85 of 2014

Provenance Food Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A(2)
Customs Act, 1962 — Section 117, 23, 28(2), 72

Citation : (2015) 320 ELT 199

Hon'ble Judges : S.C. Dharmadhikari, J;S.P. Deshmukh, J

Bench : Division Bench

Advocate : R.V. Desai, Senior Advocate and R.B. Pardeshi i/by KRP Legal, for the Appellant; Pradeep S. Jetly, Advocates for the Respondent

Judgement

1. This appeal by the assessee raises substantial questions of law. We have perused the order passed by the Commissioner of Central Excise and Customs, Nashik. In Para 4.6 and 4.7, at running Page No. 72 and 72 of its order the Commissioner held as under:--

"4.6. On perusal of the case records, I find that M/s. PFPL had not taken sufficient measures or well equipped with technologically advanced fire extinguishing equipments to prevent the fire, as it was informed by the Deputy Commissioner, Central Excise and Customs,. Nasik III Division, vide his letter F. No. NSK-III/Provenance/Food/100% EOU/97/08 dated 8-2-2012. He has reported that the Fire Brigade Certificate dated 13-5-2010 issued by the Fire Brigade department does not show or indicate the reason for cause of fire nor does not certificate mentions any safeguards taken by M/s. PFPL to prevent the fire incident. They must have ensured that the adequate measures to tackle the unforeseen situations like fire (which may cause loss of duty free goods or articles procured indigenously or imported) have been taken in time, but they remained fail in doing so. I further observe that the principle of natural justice was always extended to M/s. PFPL in this case.

4.7 Further, remission of duty was sought for the goods burnt in fire. I find that the remission of duty is not available to them for the reasons stated herein above (sub para 4.3, 4.4 and 4.5 refer)".

On the basis of this finding the final operative order reads as under:--

"4.10. In result, I pass the following order :

ORDER

1. I confirm the Central Excise duty demand of Rs. 2,31,980/- (Rupees Two Lakhs Thirty One Thousand Nine Hundred and Eighty only) against duty free procurement of indigenous raw materials, raw materials lying in WIP condition and finished goods manufactured out of duty free raw materials by M/s. PFPL in terms of provisions of Section 11A(2) of the Central Excise Act, 1944 read with Notification No. 22/2003-C.E . dated 31-3-2003 and condition envisaged in B-17 Bond executed by them.

2. I also confirm the Customs duty demand of Rs. 93,93,304/- (Rupees Ninety Three Lakhs Ninety Three Thousand Three Hundred and Four only) towards duty free importation of raw materials and Capital goods, which could not be used for specified purposes, in terms of Sections 28(2) and 72 of the Customs Act, 1962 read with Notification No. 52/2003-Cus. dated 31-3-2003 and condition envisaged in B-17 Bond.

3. In addition to above, the interest shall be charged at the appropriate rate on amount determined at Sr. No. 1 and 2 above under respective Sections of both Act.

4. I impose a penalty of Rs. 5,000/- (Rupees Five Thousand only) in terms of Rule 27 of the Central, Excise Rules, 2002 for contraventions stated above.

5. I further impose a penalty of Rs. 10,000/- (Rupees Ten Thousand only) in terms of Section 117 of the Customs Act, 1962 for contraventions stated above.

6. There shall be no remission of duty granted and the claim filed for remission of duty is declined for the reasons recorded herein above (sub para 4.3, 4.4. and 4.5 refer)".

Against such an order of the Commissioner, the assessee appellant before us approached the Customs Excise and Service Tax Appellate Tribunal, West Zonal Bench, at Mumbai. He pointed out that the order dated 24 February 2012 of the Commissioner and impugned in this appeal is totally erroneous and contrary to the plain language of Section 23 of the Customs Act, The Tribunal at the initial stage heard both sides on the application of stay and waiver of condition of pre-deposit. However, the Tribunal directed the appellant to deposit a sum of Rs. 20 lacs within a period of 8-weeks and report compliance. The Tribunal''s order could not complied with by the assessee and resultantly, the appeal came to be dismissed.

2. The substantial questions of law are as under:--

"(a) Whether in the given facts and circumstances and in law the Tribunal erred in denying the appellant an opportunity of being heard on merits of the appeal?

(b) Whether the Tribunal''s order directing the appellant to deposit Rs. 20 lacs as a condition for hearing the appeal on merits was justified in the facts and circumstances of the given case and could this condition be termed as excessive and arbitrary?"

3. We have heard Mr. Desai, learned Senior Counsel appearing on behalf of the appellant and Mr. Jetly appearing on behalf of the revenue. With their assistance, we have carefully perused the Memo of Appeal and all the orders impugned in this appeal. The appellant is supposed to have imported goods. The appellant is a 100% Export oriented unit. Imported goods were brought for use in manufacture of goods meant for export. The imported goods were housed in the bonded warehouse. The warehouse premises and all adjoining units thereto in Nashik District caught fire and goods came to be destroyed in the same. It is the claim of the applicant that over this act it had no control. There is specific provision to claim remission of duty if the goods are lost, destroyed or abandoned. It relied upon Section 23 of the Customs Act, 1962.

4. In such circumstances, it was prayed that confirmation of the duty demand, levy of interest and penalty is too harsh. There is an arguable point and strong prima facie case, the goods having been lost in fire and destroyed completely. In the light of such situation, financial hardship would be caused to the appellant assessee, if directed, to deposit same amount. The revenue reiterated the findings in the order of the Commissioner and particularly, that if the goods have been imported duty free and cleared on execution of the bond that contains a condition by which it is the duty and obligation of the importer to insure the goods against fire. In these circumstances and for violation of the various regulations and stipulations the Tribunal rightly imposed a condition of deposit of Rs. 20 lacs which is reasonable and therefore, the appeal does not raise any substantial question of law and deserves to be dismissed.

5. We are not in agreement with Mr. Jetly when he relies upon the terms and conditions in the bond and which is required to be furnished and executed by a importer like assessee before us. Had the case been approached by the authorities from the view point of non-fulfilment of the conditions stated to be mandatory for enabling it to import goods duty free, we could have understood the reliance placed by Mr. Jetly on the stipulation requiring Insurance of Imported goods. In the present case, we have reproduced the Commissioner''s findings, where there is no conclusion reached that the appellant assessee has violated any comprehensive policy or any provisions in the Customs Manual. Even if it is not averred, whether remission as claimed in terms of Section 23 of the Customs Act, 1962 can be denied is the moot question. That itself is in issue and the appellant having made out a arguable case, we do not find any basis for the

insistence by the Tribunal on the appellant depositing a sum of Rs. 20 lacs as a precondition for hearing of the appeal on merits and stay of recovery. Thus, the Tribunal found that this case to be of partial waiver. The reasons assigned in Paragraph-6 of the order would indicate that Tribunal found it a prima facie case on applicability of Section 23 of the Customs Act 1962 and it is quite clear that when the applicant assessee has not been faulted for not taking a comprehensive insurance, then, all the more such conditions as are imposed upon the assessee for prosecution of the appeal would make the remedy illusory. The conditions imposed ought to be reasonable and not excessive. They should be consistent with the findings arrived at the prima facie stage. They must have a bearing on the nature of reliefs that the appellant assessee claimed and to which it is held disentitled. In the matters of this nature and arising out of natural calamities where the customs manual or the terms and conditions of the bond prima facie ought not guide, the Customs Commissioner to decide the appeal. It is only the Tribunal which would able to guide the lower authorities in this regard.

6. In view of the above, we do not find that the Tribunal was justified in imposing a condition of deposit of Rs. 20 lacs on the appellant assessee. The initial order of the Tribunal in that regard passed on 8 October 2013 is therefore, quashed and set aside. All consequential orders also are quashed and set aside. The appeal is restored to the file of the Tribunal for being heard in accordance with law. We clarify that we have not expressed any opinion on the rival contentions. Our observations are tentative and prima facie and recorded for the disposal of the present appeal. Appeal is allowed with no order as to costs.