
(2024) 01 CESTAT CK 0009

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Custom Appeal No. 10647 Of 2023

Reena Brothers

APPELLANT

Vs

Commissioner Of Customs-Mundra

RESPONDENT

Date of Decision : 02-01-2024

Acts Referred:

Customs Act, 1962 — Section 111(d), 112(a)(i), 117, 125

Citation : (2024) 01 CESTAT CK 0009

Hon'ble Judges : Ramesh Nair, Member (J);Raju, Member (T)

Bench : Division Bench

Advocate : Uday Joshi, R.R Kurup

Final Decision : Allowed

Judgement

Ramesh Nair, Member (J)

1. The appellant has filed the present appeal against the impugned order in appeal whereby the appeal of the appellant has been rejected by the Learned Commissioner (Appeals).

2. The brief facts of the case are that the appellant had filed a Bill of Entry No. 6909337 dated 31.12.2021 for clearance of Watermelon Seeds falling under Customs Tariff Heading 12077090. It appeared that the impugned goods was restricted vide Notification No. 03/2015-20 dated 26.04.2021 and import thereof was allowed subject to the Policy Condition No. 4 of the Chapter 12 of the Customs Tariff Act, 1975. As the appellant failed to fulfill the conditions stipulated in the said notification, the goods appeared to be liable for confiscation and therefore, the impugned goods were placed under seizure on 07.01.2022. The appellant vide letter dated 27.12.2022 submitted that they did not want show cause notice and personal hearing in the matter. Accordingly, the Adjudicating Authority passed the impugned order as under:-

i) Confiscated the goods imported vide Bill of Entry No. 6909337 dated 31.12.2021 having assessable value of Rs. 46,27,641/- under Section

111(d) of the Customs Act, 1962, with an option to redeem the said goods on payment of Rs. 4,70,000/- under Section 125 of the Act for re-export purpose only.

ii) Imposed penalty of Rs. 8,50,000 on the appellant under Section 112(a) (i) of the Customs Act, 1962.

iii) Imposed penalty of Rs. 4,00,000/- on the Custom Broker M/s Ashapura Shipping Agency under Section 117 of the Customs Act, 1962.

3. Being aggrieved by the Order-In-Original, the appellant filed the appeal before the Commissioner (Appeals) which was rejected, therefore, the present appeal.

4. Shri Uday Joshi, Learned Counsel appearing on behalf of the appellant submits that the entire case of the department is based upon the fact that at the time of filing Bill of Entry and clearance of the goods there was restriction as per the foreign trade policy on import of the impugned goods. It is his submission that by the date on which the restriction was imposed, the goods had already reached India and were due for clearance. He submits that in this fact restrictions placed under foreign trade policy shall not apply when the goods are in transit. He referred to the para 1.05 of Transitional Arrangements of Foreign Trade Policy 2015-20 to submit that as per clause (b) of Para 1.05 if any restriction is imposed in respect of the imported goods for which shipment is made within the original validity period of an irrevocable commercial letter of credit established before the date of imposition of such restriction it shall not be applicable.

4.1 It is his submission that in the present case there is no dispute that the shipment of import was made within the original validity period of an irrevocable commercial letter of credit, therefore the restriction imposed post shipment of imported goods, such restriction shall not apply in the facts of the present case. In this regard, he referred to all the import documents which shows that Para 1.05 (b) is applicable. Accordingly, the restriction is not applicable. Consequently, the entire case of the department fails.

5. Shri R.R Kurup, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

6. We have carefully considered the submissions made by both sides and perused the records. We find that the case was made by the department on the basis that the restriction imposed on goods namely "Watermelon Seeds" at the time of filing of Bill of Entry and the clearances of the goods thereunder. In this peculiar situation when the goods are in transit and during intervening period the restriction was imposed, under the policy, a special provision was made under para 1.05 which reads as under:-

1.05 Transitional Arrangements

"(a) Any License/ Authorisation/ Certificate/ Scrip/any instrument bestowing

financial or fiscal benefit issued before commencement of FTP 2015-20 shall continue to be valid for the purpose and duration for which such License/ Authorisation/ Certificate/ Scrip/ any instrument bestowing financial or fiscal benefit Authorisation was issued, unless otherwise stipulated.

(b) In case an export or import that is permitted freely under FTP is subsequently subjected to any restriction or regulation, such export or import will ordinarily be permitted, notwithstanding such restriction or regulation, unless otherwise stipulated. This is subject to the condition that the shipment of export or import is made within the original validity period of an irrevocable commercial letter of credit, established before the date of imposition of such restriction and it shall be restricted to the balance value and quantity available and time period of such irrevocable letter of credit. For operationalising such irrevocable letter of credit, the applicant shall have to register the Letter of Credit with jurisdictional Regional Authority (RA) against computerized receipt, within 15 days of the imposition of any such restriction or regulation.”

6.2 From the above para 1.05 (b) it is crystal clear that if the goods are imported which is freely importable under foreign trade policy and the same is subsequently subject to any restriction or regulation, the import shall be permitted notwithstanding such restriction subject to condition that the shipment of import is made within the original validity period of an irrevocable commercial letter of credit established before the date of imposition of such restriction. The appellant have submitted the following documents:-

a) Relevant Proforma Invoice raised by shipper M/s. Wealth Capital General Trading LLC No. [2/2021] dated 18.01.2021 duly accepted by importer. It is evident that goods were ordered on 18.01.2021 which is much prior to the date of Notification i.e. 25.04.2021

b) Consequent to this Proforma Invoice, a Sale Contract No. 02/2021 was also signed on 18.01.2021 by both the parties.

c) On 25.01.2021 100% remittance was made to the supplier vide

SWIFT MT103 OUTWARD

d) Debit advice dated 25.01.2021 for above remittance by Karur Vysay Bank Unjha was also issued.

e) However, the B/L was issued on 09.05.2021 due to shipment company's delay

6.3 The aforesaid documents were admittedly submitted before restriction imposed in import of "watermelon seeds" brought vide DGFT Notification No. 3/2015-20 dated 26.04.2021. From the above documents it is undisputed that the appellant had complied with the stipulation of Transitional Arrangement as per Foreign Trade Policy as the appellant had paid entire amount of the consignment in question much prior to watermelon seeds being placed under restricted category from free category. Therefore, in our considered view the

appellant are eligible for consequential benefit of import qua FTP provisions.

6.4 We have observed that the lower authorities have failed to appreciate the aforesaid factual and legal position whereby the impugned order upholding confiscation of goods and penalties on the appellant is not sustainable and liable to be set aside.

7. Accordingly, we set aside the impugned order and allow the appeal with consequential relief.