(2010) 04 KAR CK 0099

In the Karnataka High Court

Case No : C.S.T.A. No. 1 of 2008

The Commissioner of Customs	APPELLANT
Vs	
Muchipara Consumers Co-operative Stores Ltd.	RESPONDENT

Date of Decision : 09-04-2010

Acts Referred:

Citation : (2010) 256 ELT 395

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : Raghavendra B. Hinger, for N.R. Bhaskar, for the Appellant; K. Parameshwaran, for the Respondent

Final Decision : Dismissed

Judgement

B.V. Nagarathna, J.—The revenue has come up in this appeal being aggrieved by the order passed by the CESTAT in final order No. 576/2008 dated 5.5.2008 raising the following substantial questions of law:

i) Whether the CESTAT is right in directing the department to refund the Mahazar value when the goods had been disposed of by following the procedure of law and value realised from auction had been lesser than the market value and the same has already been refunded?

ii) Whether the tribunal was right in relying upon the decision of Northern Plastics Ltd. (Now Merged With Consolidated Photo and Finvest Ltd.) Vs. Collector of Customs and Central Excise, wherein the refund of CIF value (i.e. purchase price) of imported goods was allowed instead of mahazar value on the peculiar circumstances of the case?

iii) Whether the CESTAT Bangalore is competent and empowered to award the market price/mahazar value of the confiscated goods, which amounts to awarding compensation not provided in the Customs Act, 1962?

2. The facts of the case are hereunder:

On credible information received by DRI Officers, Bangalore, certain silk yarn belonging to the respondent-assessee was seized from the premises of Patel Angadia Co. Pvt. Ltd. Thereafter a show cause notice was issued to the assessee as well as Patel Angadia Co. Pvt. Ltd., on 16.3.2000. The respondent-assessee sent a detailed reply to the show cause notice contending that it has purchased the goods from National Co-operative Consumer Federation of India Ltd., vide challan No. 8175 dated 7.9.1999 by paying an amount of Rs. 12,63,850/- by issuing a cheque drawn on West Bengal State Co-Operative Bank Ltd., Calcutta. Since the goods seized were perishable in nature the Department sold the same o 23.3.2000. The respondent-assessee had filed writ petition in W.P. No. 1 1988/2000 requesting the court to direct the appellant to stop selling the goods. The interim order was granted on 3.4.2000. But by the time the interim order was granted goods were sold. Therefore, the writ petition came to be dismissed as having become infructuous. The respondent-assessee filed an application for refund of the value of the goods sold by the appellant. In the mahazar, the value of the goods was shown as Rs. 15,59,600/- as market value. The claim of the assessee was rejected by the assessee by the revenue and held that the assessee is entitled for refund of Rs. 10,90,406/- which amount was received by the revenue in a public auction conducted by it. Being aggrieved by the order of the adjudicating authority the appeal came to be filed before the Commissioner of Customs (Appeals) which appeal came to be rejected and against which appeal was preferred before the tribunal. The tribunal has allowed the appeal filed by the assessee directing the appellant herein to refund the amount with an amount of Rs. 15,59,600/- along with interest. This order is called in question in this appeal.

3. Having heard the Counsel for the parties what is to be considered by us in this appeal is, whether the appellant is entitled to claim the amount of Rs. 15,59,600/- as ordered by the tribunal or a sum of Rs. 10,90,406/- as ordered by the adjudicating authority.

4. Admittedly, the assessee has purchased the goods from a co-operative society by paying the value of the goods by means of an account payee cheque. The value of the goods purchased by the respondent-assessee is not in dispute. Actually, the assessee had purchased the silk yarn on 7.9.1999. The silk yarn has been seized by the DRI Officers. It is not the case of the assessee that there was escalation in the price of silk yarn from 7.9.1999 to 18.9.1999. It is also not the case of the revenue that the market value of the silk yarn has come down between this period. Therefore, we are of the view that the appellant is entitled for the actual value paid by the assessee for purchasing the silk yarn on 7.9.1999. Under the circumstances, we are of the view that even though the revenue has sold the goods in public auction on 23.3.2000. As the assessee had paid a sum of Rs. 12,63,850/- the assessee is entitled for a sum of Rs. 12,63,850/- with interest as ordered by the authorities. Therefore, the appeal is allowed in part without answering the substantial questions of law as we have decided this case on the facts of this case.

