Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 1

Customs Appeal No. 10918 of 2017-DB

(Arising out of OIO-AHM-CUSTM-000-COM-013-16-17 Dated- 31/01/2017 passed by Commissioner of Central Excise and Service Tax-AHMEDABAD)

Powergrid Corporation Of India Limited **........Appellant**
Saudamini Plot No.2 Sector 29
Gurgaon, Hariyana

VERSUS

C.C.-Ahmedabad **........Respondent**
Custom House,Near All India Radio
Navrangpura,Ahmedabad,, Gujarat

APPEARANCE:
Shri. Jayant Kumar, Advocate for the Appellant
Shri. Himanshu P Shrimali, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. RAJU, MEMBER (TECHNICAL)
HON'BLE MR. SOMESH ARORA MEMBER (JUDICIAL)

Final Order No. A/ 10783 /2023

DATE OF HEARING: 24.03.2023
DATE OF DECISION:24.03.2023

Raju

This appeal has been filed by M/s. Powergrid Corporation Of India Limited against demand of Safeguard duty, interest and imposition of penalties for imports made by them through various ports. The order has been passed by Principal Commissioner of Customs, Ahmedabad as common adjudicating authority for all these imports through different port.

2. Learned Counsel appearing for the appellant pointed out that they had imported Glass Ceramics or Porcelain electrical disc insulators in the year 2012-2013. They were declaring the goods correctly in the Bills of Entry and there was no misdeclaration on the part of the appellant in filing the Bills of Entry. He claimed that the ICEGATE System was not updated with the imposition of safeguard duty w.e.f 20 December, 2012, vide Notification No. 5/2012-Customs (SG) dated 20.12.2012. Consequently they as well as Customs Authorities were not aware of the imposition of the safeguard duty and the same was not paid. The matter was brought to their notice in the

month of May, 2013 and they immediately paid the entire duty along with interest. However, later on 31.12.2013, a show cause notice was issued to them demanding the duty and interest which they had already paid for imposition of penalties under Section 112A for violation of the provisions of Clause (d) and (o) of Section 111 of the Customs Act, 1962.

3. Learned Counsel claimed that they are appears you and they had no malafide intention. They were simply not aware, just like the Customs Authorities, about the imposition of Safeguard Duty w.e.f. 20 December, 2012. When the matter was pointed out they immediately paid the duty along with interest.

3.1 He further pointed out that the Clauses (d) and (o) of Section 111 invoked for confiscation are not applicable to the instance case, Clause (d) of Section 111 reads as under:-

> *"any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force".*

He pointed out that there is no prohibition on these goods and in these circumstances this clause (d) of Section 111 could not have been invoked.

3.2 He further pointed out that clause (o) of Section 111 has been invoked the said clause reads as under:-

> *"any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer"*

He pointed out that even this clause is not applicable to their case and they had not availed benefit of any notification with respect to safeguard duty.

4. In this background, he claimed that the penalties could not have been possibly imposed in this case.

5. Learned AR relies on the impugned order. He relied on the decision of Hon'ble High Court of Delhi in the case of ESCORTS HEART INSTITUTE & RESEARCH CENTRE -2017 (351) ELT 19 (Del.)

6. We have considered the rival submissions. We find that it is not in dispute that the appellant had not misdeclared anything in their bill of entry. The only thing missing was the fact that Safeguard duty which was imposed w.e.f 20 December, 2012 was not included. The appellant claimed that they were not aware about the imposition of Safeguard Duty. From the fact of the case it is seen that even Customs Authorities were not aware of the fact of imposition of Safeguard Duty and the ICEGATE System was also not updated. In this background I do not find any malafide on the part of the appellant.

6.1 We also find that the appellant immediately paid the duty along with interest as soon as the issue was pointed out to them in May, 2013.

6.2 The revenue has invoked Clause (d) and (o) of Section 111 to imposed penalties under Section 112A. Clause (d) of Section 111 reads as under:-

> *"any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force".*

6.3 We do not find any misdeclaration on the part of the appellant in the Bill of Entry. The goods are not prohibited. In these Circumstances, Clause (d) of Section 111 could not have been invoked and no penalty under the said Section be imposed.

6.4 Clause (o) of the Section 111 of Customs Act, reads as under:-

> *"any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer".*

6.5 We find in the Notification 5/2012-Customs was notification imposing Safeguard Duty and in that background it could not be called the exemption notification. In this background we do not find any merit in the impugned order invoking Clause (o) of Section 111 of Customs Act, 1962.

7. Learned AR relies on the decision of Hon'ble High Court of Delhi in the case ESCORTS HEART INSTITUTE & RESEARCH CENTRE (supra). We find that in the instance case we do not find any misdeclaration on the part of the importer and to their extent the facts are different. The said case is therefore not relevant in the facts of the instance case.

8. In this background, we do not find any merit in the impugned order. The said order is set aside, appeal is allowed.

(Dictated and pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PRACHI