CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Customs Miscellaneous Application No.70191 of 2019
(On behalf of Appellant)
In

Customs Appeal No.70401 of 2016-Division Bench

(Arising out of Order-in-Appeal No. MRT/EXCUS/000/APPL-I/478/2015-16 dated 29/01/2016 passed by Commissioner of Central Excise (Appeals-I), Meerut)

M/s Modi Rubber Ltd. .....Appellant

(4-7-C, DDA Shopping Centre, New Friends Colony, New Delhi-110025)

VERSUS

Commissioner of Central Excise(Appeals-I) ....Respondent

(Mangal Pandey Nagar Opp. CCS University, Meerut)

APPEARANCE:

Shri Nikhil Agarwal, Advocate for the Appellant
Shri Pawan Kumar Singh, Authorised Representative for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

MISCELLANEOUS ORDER NO. - 70156 / 2019

FINAL ORDER NO. - 71082 / 2019

Date of Hearing : 23 May, 2019
Date of Decision : 23 May, 2019

PER: ANIL G. SHAKKARWAR

The present appeal is directed against Order-in-Appeal No. MRT/EXCUS/000/APPL-I/478/2015-16 dated 29/01/2016 passed by Commissioner of Central Excise (Appeals-I), Meerut.

2. Brief facts of the case are that the appellants were granted license for private warehouse under the provisions of Section 59 of Customs Act, 1962 with effect from 28/04/1995 for storage of various imported capital goods and imported raw materials to be used for manufacture of tyres. The warehousing period of the license was renewed upto 31/08/2001. In the year 2004 the appellant applied to BIFR. On 17/05/2006 BIFR declared the appellants company as sick industrial company. On 20/08/2007 the factory premises were sealed by Competent Authorities and factory premise was only handed over to the management of the appellant in the month of August under the directions of the Authorities under BIFR. In 2009 appellant negotiated with the buyers for re-export of the said capital goods lying in the warehouses since the capital goods could not be put to use due to sickness of the unit. In the year 2009 appellant requested the Revenue to grant extension of license and to permit re-export of capital goods. On 25/11/2009 Revenue allowed appellant to remove raw material lying in the warehouses. On 11/03/2011 Revenue directed the appellant to pay requisite duty on the capital goods lying in the warehouses and clear the same. In 2013 Revenue rejected the request of the appellant for permission to re-export the said capital goods and also extension of warehousing period. The appellant’s request for extension of warehousing period was rejected through a letter dated 02/08/2013. Thereafter also appellant have written several representation letters to Revenue to permit the re-export of capital goods. There was no response to such communication of the appellant.

3. On 05/11/2014 the appellant relinquished their title of the said goods under Section 68 of the Customs Act, 1962. On 19/03/2015 jurisdictional Assistant Commissioner passed an order and he rejected the appellant’s request for relinquishment of the title of the said capital goods. Being aggrieved by the said order dated 19/03/2015 appellant filed appeal before learned Commissioner (Appeals) who has decided the said appeal

through impugned Order-in-Appeal wherein he has upheld the order dated 19/03/2015 passed by the Original Authority. Aggrieved by the said order appellant is before this Tribunal.

4. We have heard learned counsel for the appellant Shri Nikhil Agarwal who has submitted that the Commissioner (Appeals) has held that provisions related to relinquishment of the title were introduced with effect from 14/05/2003 and the imports were of earlier period and therefore the said provisions were not applicable to the appellant. The appellant has submitted that the issue is no more *res integra* and stands settled through various rulings by the Hon'ble High Courts such as Hon'ble Rajasthan High Court and Hon'ble Karnataka High Court in following cases:-

1. J.K. Cement Works vs. Commissioner of Central Excise & Customs, Jaipur reported as 2008 (223) E.L.T. 138 (Raj.)

2. Commissioner of Customs, Bangalore vs. PSI Data Systems Ltd. reported as 2010 (255) E.L.T. 55 (Kar.)

3. Commissioner of Customs, Bangalore vs. i2 Technologies Software Pvt. Ltd. reported as 2007 (217) E.L.T. 176 (Kar.).

He also has brought out attention to the ruling by Hon'ble Bombay High Court in the case of Mafatlal Fine Spinning & Manufacturing Col Ltd. vs. Union of India and Others reported as 1987 (27) E.L.T. 19 (Bom.) where *pari materia* provisions under Section 23 of Customs Act, 1962 were dealt with. He has further submitted that reliance of learned Commissioner (Appeals) in his impugned order on the Hon'ble Supreme Court decision in the case of Kesoram Rayon vs. Collector of Customs, Calcutta reported as 1996 (86) E.L.T. 464 (S.C.) is not applicable in the present case inasmuch as the said ruling was in respect of determination of rate of duty and was not in respect of relinquishing of the title over warehoused goods and there was no consideration of proviso to Section 68 in the said ruling by Hon'ble Supreme Court.

5. We have heard Shri Pawan Kumar Singh learned Superintendent on behalf of the Revenue who has supported the impugned Order-in-Appeal.

6. Having considered the rival contention and on perusal of records, we note that the issue in the present appeal is whether the said proviso which became operational with effect from 14/05/2003 to Section 68 of Customs Act, 1962 is applicable to the present case. We have carefully have gone through the ruling by Rajasthan High Court in the case of J.K. Cement Works (Supra) and also the other rulings as stated above and we hold that the said proviso to Section 68 of the Customs Act, 1962 is applicable in the present case. We hold that appellant is entitled to relinquish title of the capital goods. We note that the appellant is ready to pay warehousing charges and no Customs duty is recoverable from the appellant. We further note that the appellant has also agreed that they are liable to pay warehousing charges and interest on the warehousing charges. In above terms appeal is allowed. Miscellaneous Application also stands disposed of.

(Dictated and pronounced in open court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Lks