CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20066 of 2020

(Arising out of Order-in-Appeal No. 137/2019 dated 17/10/2019 passed by Commissioner of Customs (Appeals), Bangalore)

Boxco Logistics India Pvt Ltd
1-S-15-1011/4 2nd Floor,
Aura The Place, Urwa Store,
Kulur Ferry Road
MANGALORE - 575006
KARNATAKA

Appellant(s)

VERSUS

Commissioner Of Central Excise & Central Tax, Mangalore Commissionerate
7th Floor, Trade Center, Bunts Hostel Road
Mangalore - 575003
Karnataka

Respondent(s)

APPEARANCE:

Shri C.R. Gupta, Senior Manager for the appellant.
Shri K.A. Jathin, Deputy Commissioner(AR) for the respondent.

CORAM:
HON'BLE Dr. D.M. MISRA, MEMBER (JUDICIAL)

Final Order No. 20328 / 2023

Date of Hearing: 17/04/2023
Date of Decision: 17/04/2023

Per : DR. D.M.MISRA

This is an appeal filed against the Order-in-Appeal No.137/2019 dt. 17/10/2019 passed by the Commissioner of Customs(Appeals), Bangalore.

2. Briefly stated the facts of the case are that the appellants are Customs Broker for M/s. Yara Fertilisers India Pvt. Ltd. (importer) who has imported Calcium Nitrate with Boron and Nitro Phosphate with Potash through New Mangalore Port by claiming concessional rate of BCD in terms of Notification No.12/2012-Cus dt. 17/03/2012 which prescribes BCD @ 5% instead of 7.5% failing under Chapter 31 of the Customs Tariff Act, 1975. Later it was found that the importers are not eligible to the benefit of Notification; consequently proceedings were initiated for recovery of differential duty along with interest and proposal for penalty on the importer as well as on the appellant. On adjudication, the demand against the importer was confirmed along with interest and penalty was also imposed besides penalty of Rs.30,000/- on the Customs Broker i.e. the present appellant under Section 112(a) of the Customs Act, 1962. Aggrieved by the order of the adjudicating authority, the appellant filed appeal before the Commissioner(Appeals) who rejected the same. Hence the present appeal.

3. At the outset, the learned authorised representative for the appellant submits that as per the Notification No.12/2012 -Cus dt. 17/03/2012, they simply filed the bill of entry as per the disclosure made by the importer along with chemical analysis certificate. Later on, further analysis of the sample, the Department came to the conclusion that benefit of Notification No.12/2012-Cus cannot be extended to the importer;

consequently differential duty was proposed to be recovered. He submits that as per the records made available to the Customs Broker, the bill of entry was filed; hence imposition of penalty on them is unwarranted. Further he submits that since the issue involves is question of interpretation of law and hence in view of the judgment of the Hon'ble Tribunal in the case of Vadilal Industries Ltd. Vs. CCE, Ahmedabad [2007(213) ELT 157 (Tri. Ahmd.)], penalty cannot be imposed. Further he submits that the appellant had no role whatsoever in claiming exemption notification by the importer on the basis of the certificate and fair interpretation of the notification; therefore imposition of penalty should not have confirmed by the learned Commissioner(Appeals) in the present case as in similar cases involving the same importer and the present appellant, the learned Commissioner(Appeals) vide Order No.85-88/2018 dt. 13/12/2018 dropped the penalty against the appellant. He pleads that penalty should be set aside in the present case also.

4. Learned AR for the Revenue reiterated the findings of the learned Commissioner(Appeals).

5. Heard both sides and perused the records. I have carefully considered the submissions advanced by both the sides. The short issue involved in the present case for determination is that whether penalty imposed under Section 112(a) of the Customs Act on the Customs Broker/appellant, be sustainable. I

find that the issue relates to claiming exemption Notification No.12/2012-Cus on the import of fertiliser by the importer M/s. Yara Fertilisers India Pvt. Ltd., on the basis of chemical test report furnished at the time of assessment of the Bill of Entry. Later, on further analysis of the sample by the Department, different composition of the goods was found which resulted in denying the benefit of the said notification. In these circumstances, I do not find any ground to impose penalty on the Customs Broker who has no knowledge about the outcome of the said chemical analysis conducted by the Department. I find that in similar circumstances involving the same parties pertaining to different Bill of Entry, the learned Commissioner(Appeals) by a detailed order even though confirmed the demand of differential duty, set aside the penalty against the Customs Broker. In these circumstances, I do not find merit in the impugned order imposing penalty on the Customs Broker for advancing the claim of inapplicable notification by the importer. Consequently, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per the law.

(Dictated and pronounced in open court)

(Dr. D.M. MISRA)
MEMBER (JUDICIAL)

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