CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL

1st Floor, WTC Building, FKCCI Complex, K. G. Road,
BANGLORE-560009

Regional Bench COURT-2

Customs Appeal No.1076 of 2010

[Arising out of the Order-in-Original No. 01/2010-Cus. Commr. Adjn. dated 03.05.2010 (Review Order No. 09/2010 dated 03.05.2010 passed by the Commissioner of Commissioner of Customs, Visakhapatnam.]

COMMISSIONER OF CUSTOMS,
Central Excise Building,
Port Area,
Visakhapatnam,
Andhra Pradesh **.......Appellant**

VERSUS

HANDUM INDUSTRIES LTD.
No.296/7/7, Sheri Bollaram,
Jinnaram Manddal, Medak District
Andhra Pradesh **.....Respondent**

Appearance:
Mr. B.V. Kumar, Advocate Appeared for Appellant
Mr. K. Vishwanath, Authorized Representative for Respondent

Coram:
Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mrs. R. Bhagya Devi, Member (Technical)

FINAL ORDER No. 20151 of 2024

Date of Hearing: 15.09.2023

Date of Decision: 14.03.2024

PER: P.A. AUGUSTIAN

The only issue in present appeal is whether adjudicating authority is bound to impose penalty under section 114A of the Customs Act, 1962 equivalent to the duty and interest. Respondent herein is an 100% EOU manufacturing rerolled products of iron and steel. Alleging that the respondent had procured Non-alloy without payment of Customs duty and diverted the same to the local market, proceedings were initiated and adjudication authority vide impugned order denied the benefit of notification and confirmed duty Of Rs.87,82,626/- with interest. The adjudicating authority also imposed penalty equivalent to customs duty of Rs.87,82,626/- under section 114A and also imposed penalty on other notice, Aggrieved by above said order, present appeal is filed on the ground that as per the Board Circular No.61/2002 dated 20.09.2002, the adjudicating authority is bound to impose penalty under section 114A of the Customs Act, 1962 equivalent to the duty and interest.

2. When the appeal came up for hearing, Learned AR reiterated the findings. Ground of appeal and draw our attention to Board Circular.

3. Learned counsel for the respondent submits that issue is settled that penalty can be imposed under section 114A of the Customs Act only equivalent to differential duty or penalty and not both.

4. Regarding the appeal filed by the respondent and co-noticees having appeal No. C/214 to 218/2009 & C/682 to 688/2010, Learned Counsel for the respondent submits that issue is settled as per Final Order dated 11.06.2021 of this Tribunal of the National company law (NCLT)

Hyderabad and considering the same, connected appeals were also disposed by this Tribunal vide Final order No 20415 to 20422 /2023.

> "Learned advocate for the appellant submits that in view of the Final Order dated 11.6.2021 of the National Company Law Tribunal (NCLT), Hyderabad bench and subsequent claim pursuant to the said order launched by the Department due for recovery, the appellants intend to withdraw the appeals. Consequently, appeals are dismissed being withdrawn".

Learned counsel for the respondent also produced copy of Final Order No.20415 to 20422 /2023 dated 11.06.2021 of the National company law (NCLT) Hyderabad. Learned counsel further submits that the proceedings against the respondent herein is unsustainable as per the IBID order.

5. Heard both sides. Since the issue is settled as per the order of the NCLT vide Final Order dated 11.06.2021, the appeal abates, as per Rule 22 of the CESTAT (procedure) Rules, 1982.

(Order Pronounced in Open court on 14.03.2024)

(P.A. Augustian)
Member (Judicial)

(R. Bhagya Devi)
Member (Technical)

Ganesh