CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Cross Application No. 20207 of 2018
Customs Appeal No. 21571 of 2016

(Arising out of Order-in-Original No. MLR-EXCUS-000-COM-MS-0044-15-16 dated 23.03.2016 passed by the Commissioner of Central Excise Commissionerate, Mangalore.)

The Commissioner of Central Excise, Mangaluru Commissionerate,
7th Floor, Trade Centre,
Bunts Hostle Road,
Mangaluru – 575 003.

Appellant(s)

VERSUS

M/s. Noel Agritech Ltd.,
Noel House, 16-12-690,
KACES Campus,
Balmatta,
Mangalore – 575 001.

Respondent(s)

APPEARANCE:

Mr. Maneesh Akhoury, Assistant Commissioner (AR) for the Appellant

None for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS R BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 21641 /2024

DATE OF HEARING: 05.11.2024
DATE OF DECISION: 05.11.2024

PER : DR. D.M. MISRA

This is the second round of litigation before this Tribunal. The present appeal is filed against the Order-in-Original No.MLR-EXCUS-000-COM-MS-0044-15-16 dated 23.03.2016 passed by the Commissioner of Central Excise, Mangalore.

2. Briefly stated the facts of the case are that the appellant is a 100% EOU and was given permission vide letter No.PER:195(1994) EOA/249/94 dated 22.06.1994 for producing, warehousing and export of flowers and leaves. As per the said permission, they were required to discharge export obligation by exporting six lakhs numbers of flowers and leaves, each with a value addition of 74%. During the period 1995 to 1999, they imported capital goods, spares, consumables, raw materials, equipments etc. totally valued at Rs. 2,62,83,048/- availing customs duty exemption of rs.2,33,52,317/- in terms of Notification No.13/81-Cus dated 09.02.1981 as amended by Notification No.53/97-Cus dated 03.06.1997. However, the appellant failed to achieve the export obligation as prescribed. Consequently, a notice was issued to them on 12.01.2000 to recover customs duty amounting to Rs.2,33,52,317/- along with interest with proposal for confiscation and penalty. On adjudication, the demand was confirmed with interest and directed confiscation of the capital goods, spares etc. with option to redeem the same on payment of fine of Rs.50.00 lakhs, and imposed penalty of Rs.20.00 lakhs under Section 112 of the Customs Act, 1962. Aggrieved by the said order, the appellant filed an appeal before the Tribunal and Tribunal by order dated 19.05.2011 remanded the matter to the adjudicating authority after setting aside confiscation and penalty to re-quantify the duty liability and interest taking into consideration the admissibility of depreciation and quantum thereof. Against the said order of the Tribunal, Revenue filed appeal before the Hon’ble High Court of Karnataka, which was dismissed. In the *de novo* proceedings, the learned Commissioner taking note of the order of this Tribunal, calculated the depreciation admissible to the respondent and quantified the duty liability as Rs.1,13,32,768/- along with interest. Aggrieved by the said order, Revenue filed the present appeal.

3. Reiterating the grounds of appeal, the learned AR for the Revenue has submitted that even though the Tribunal in its order directed the adjudicating authority to examine the depreciation on capital goods but there is no discussion in the impugned order on the admissibility of the depreciation on capital goods and the learned Commissioner has directly extended the benefit of depreciation without due verification of its admissibility in principle. It is submitted that the Circular No.27/98-Cus dated 21.04.1998 and No.43/98-Cus dated 26.06.1998 referred by the adjudicating authority refer to the mode of computation of depreciation, which pertains to debonding of capital goods from the EOU whereas the present case does not involve debonding and clearance of capital goods from the EOU but involves non-compliance of the condition of the notification availed at the time of importation. Further, it is submitted that the assessee has not submitted any evidence regarding the commencement of production by the unit nor any commercial production had been commenced by the respondent. Hence the adjudicating authority failed to comply with the Final Order of the CESTAT.

4. Heard the learned AR for the Revenue. None present for the respondent and perused the records.

5. We find that the matter initially reached before this Tribunal whereby the respondent had challenged the order of the Commissioner confirming the demand of Rs.2,33,52,317/- in terms of Notification No.13/81-Cus dated 09.02.1981 as amended by Notification No.53/97-Cus dated 03.06.1997. After a detailed analysis of the submissions made by both sides and taking note of the submission of the appellant, the order was passed. It is observed that after importing the capital goods and equipments, the appellants found that the equipments were not suitable and were not able to generate the kind of environment

which was required for production but they could able to export only flowers worth Rs.42.00 lakhs with the installed plant and machinery. Also, it was brought to the notice of the Tribunal the fact that the Netherlands, the county to which respondents wanted to export the flowers, increased the Customs duty on flowers, thereby making it uneconomical to produce and import flowers to the said country. In the said order, this Tribunal though confirmed that the duty is payable by the respondents who failed to comply with the condition of fulfilment of export obligation even though they made export only to the tune of Rs.42 lakhs, remanded the matter to the adjudicating authority to consider and calculate the depreciation admissible to the respondent in computing the duty liability. Also, the Tribunal has set aside the direction of confiscation and imposition of penalty on the respondent in the said remand order. The adjudicating authority taking note of the said order of the Tribunal computed the depreciation and recorded in the order as follows:-

10. It is seen from the case records that the capital goods, components, parts etc were imported without payment of customs duty as detailed below.

Sl.No.	Bill of Entry No/dt	Description of the goods	Value
1	544/3.4.1995	Poly claded Green House with complete accessories	2,52,32,535.00
2	1234/11.8.1995	Green House Material	11270.00
3	1235/11.8.1995	Hand Probe, Level, Clamps, Anle Key Metal	8197.00
4	2500/21.10.1997	Spares, Accessories, Implements etc for the Green House	948278.00
5	25569/16.4.1998	Spare parts for the Green House	82767.00
Total			2,62,83,047

11. It is observed that the capital goods have been imported during 1995 to 1999 but the commercial production was not commenced. Accordingly, the assessee failed to achieve the export obligation as on date as prescribed by the Secretariat for Industrial Approvals and thereby failed to fulfill the conditions specified by the SIA vide letter No. PER.195(1994) EOU/249/94 dt 22.6.1994 and the provisions of notification Nos. 13/81 and 53/97 Cus as amended. In the light of the direction of the Hon'ble CESTAT, the benefit of depreciation needs to the extended and the value needs to be arrived at accordingly. As the assessee has imported the said capital goods during the period from 1995 to 1999, the value ought to have decreased in the subsequent years. This decrease in the value of goods is compensated by allowing depreciation in the value in terms of the taxing statutes. The term "to allow depreciation" has been provided in the Central Excise/Customs procedures in order to determine the depreciated market value. The Central Board of Excise and Customs has issued the circular No.27/98 Cus as amended vide not. No.43/98 Cus dated 26.06.98 prescribing method and the percentage of depreciation to be allowed year wise. The said circular is extracted below.

> *"I am directed to refer to Board's Circular No. 27/98-Cus., issued from F. No. 314/19/94-FTT, dated 21-4-1998. It has been provided in para 4 of the above said circular that the depreciation for capital goods other than computers, at the following rates may be allowed:*
> *4% For every quarter in the 1st year*
> *3% For every quarter in the 2nd year*
> *3% For every quarter in the 3rd year*
> *2.5% For every quarter in the 4th year*
> *2%- For every quarter in the 5th year*
> *and thereafter subject to a maximum of 75%.*
>
> *2. Representations have been received from the Trade and recommendations from the Ministry of Commerce that the above said depreciation norms may be raised to an overall limit of 90% as provided in the Exim Policy as also in the Income Tax Rules, 1962.*
> *3. The issue has been re-examined by the Board and its has been decided to revise the depreciation norms for the capital goods other than computers and computer peripherals, to 90% with the following stipulations:*
>
> *4% For every quarter in the 1st year*
>
> *3% For every quarter in the 2nd year*
>
> *3% For every quarter in the 3rd year*
>
> *2.5%- For every quarter in the 4th year*
>
> *and thereafter subject to a maximum of 90%."*
>
> *<u>Circular No. 27/98-Cus., dated 21-4-1998.</u>*
>
> > **5. The depreciation shall be calculated as per straight line method. However in case of partial debonding of the computer or other capital goods as the case may be, are sold at a value higher than that arrived after allowing depreciation at the above said rates, the transaction value may be taken as the assessable value for the purpose of calculation of duty."*
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> *12. The above circulars prescribe the rate of depreciation to be allowed in respect of capital goods other than computers and computer peripherals and the method of calculation of depreciation. As discussed in preceding para, the capital goods have been imported under the cover of bills of entry and the value declared therein has been assessed by the Customs Officer, I would like to adopt the said value for allowing depreciation and the customs duty payable as detailed in the table-I mentioned below.*

Table I (Amount in Rs)

Bill of Entry No/dt	Value	First year @16% depreciation	First year Value after depreciation 16%	Second year @12%	Value after depreciation	Third year @12%	Value after depreciation	Fourth year 10%	Value after depreciation	Customs duty payable
544/ 3.4.1995	25232535	4037206	21195329	3027904	18167425	3027904	15139521	2523254	12616268	11323100
1234/11.8.1995	11270	1202	10068	1352	8715	1352	7363	1127	6236	5457
1235/11.8.1995	8197	874	7323	984	6339	984	5355	820	4536	2767
2500/21.10.1997	948278	75862	872416	113793	758622	0	0	0	0	521553
25569/16.4.1998	82767	13243	69524	0	0	0	0	0	0	33024
Total	26283047	4128387	22154660	3144034	18941102	3153966	15787136	2525200	12627039	11332768

13. From the above, it can be considered that the depreciated value amounting to Rs. 1,26,27,039/ of the said capital goods for the period of 5 years as the capital goods have been received during the period 1995-1999. The customs duty liability on the same works out to Rs 1,13,32,768/- and the assessee is liable to pay the said Customs duty of Rs. 1,13,32,768/- along with applicable interest under Section 59 and 61. read with Section 72 of the Customs Act, 1962.

6. We do not find any discrepancy in the said calculation of the learned Commissioner and the depreciation has been calculated as per the observation of the Tribunal in the remand order. In the result, the impugned order is upheld and the Revenue's appeal is dismissed. Cross-objection filed by the respondent also gets disposed of.

(Operative part of this Order was pronounced in Open Court on conclusion of the hearing.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R BHAGYA DEVI)
MEMBER (TECHNICAL)

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