CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

E/20406/2018-SM, E/20689/2018-SM

[Arising out of Order-in-Appeal No. 67-68/2018-CT dated 18/01/2018 passed by Commissioner of Central Tax, BANGALORE-II (Appeal).]

M/s. Steer Engineering Pvt. Ltd
No 290 4th Phase Peenya Industrial Area
BANGALORE - 560058
KARNATAKA

Appellant(s)

Versus

Commissioner Of Central Tax, Bangalore North West Commissionerate
2nd Floor, South Wing,
BMTC Bus Stand Complex
Shivaji Nagar
Bengaluru - 560051
Karnataka

Respondent(s)

Appearance:

Mr. Raghavendra, Advocate
G.SAMPATH & S. RAGHU
543, 12TH CROSS, 8TH MAIN
J.P NAGARA 2ND PAHASE,
BANGALORE - 560078
KARANATAKA

For the Appellant

Dr. J. Harish,
Dy. Commissioner (AR)

For the Respondent

Date of Hearing: 25/10/2018
Date of Decision: 25/10/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 21668-21669 / 2018

Per : S.S GARG

These two appeals have been filed by the appellant directed against the common impugned order dated 18.1.2018 passed by the Commissioner (A) whereby the Commissioner (A) has upheld the Order-in-Original. Since there is a common impugned order involving identical issue, therefore, both the appeals are being disposed of by this common order.

2. Briefly the facts of the present case are that the appellants are registered under Central Excise and are manufacturers of plastic processing machine falling under Chapter 84 of the Schedule to the Central Excise Tariff Act, 1985. They are working under 100% EOU scheme holding private bonded warehouse No.48/2003 dated 23.4.2003. The appellants had sought for de-bonding of indigenous capital goods and raw materials. It was observed that in respect of these warehoused goods, validity period had expired and the appellants had not sought for extension of warehousing period. It appeared they violated the provisions of Section 72(b) of the Customs Act, 1962. In this connection, show-cause notices were issued to the appellants. After following the due process, the original authority confirmed the demand. Aggrieved by the said order, the appellants have filed these two appeals.

3. Heard both the parties and perused the records.

4. Learned counsel for the appellants submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the departmental Circular which is binding on the department. He further submitted that binding judicial precedents of the Court has also been ignored. He further submitted that the appellants have got extended the warehousing license and the said extension of the warehousing license which has been renewed up to July 2014 have also been produced on record. He further submitted that once the warehousing license is extended, then the warehousing period of the capital goods automatically stands extended. In support of this, he relied upon the Circular No.7 of the 2005-Cus. dated 14.2.2005, which clearly observed as under:

> *CBEC Circular No.7/2005-Cus. dated 14.2.2005 – On going through the circulars issued by the CBEC, it is found that the CBEC has adopted always a liberal approach towards the procedures in respect of 100% EOU. The capital goods imported in 100% EOUs are meant for production of goods, which are ultimately to be exported. All the 100% EOUs have got warehousing license and their validity period is periodically extended. In the Circular of 2005, it is stated that even if the manufacturer or the importer has not applied for extension of warehousing period in respect of the imported goods, the very fact that the warehouse license has been extended is sufficient and automatically the warehousing period also may be got extended."*

He has also relied upon the decision of this Bench in the case of Macmillan India ltd. vs. CC, Bangalore: 2008 (223) ELT 449 (Tri.-

Bang.) wherein under the similar circumstances, the Tribunal has held that the demand of duty and imposition of penalty are not sustainable.

5. On the other hand, the learned AR defended the impugned order.

6. After considering the submissions of both the parties and after going through the Circular No.7/2005-Cus. dated 14.2.2005, I am of the view that once the warehousing license of the appellant is renewed up to 2014 as shown by the appellants, then consequently as per the above said Circular, bonded warehousing period has automatically renewed up to 5.7.2014 and at the time of de-bonding, both the licenses were valid and in existence and therefore, demanding the duty and imposing penalty is not sustainable in law and therefore, I set aside the impugned order by allowing the appeals of the appellants.

(Operative portion of the Order was pronounced
in Open Court on **25/10/2018**)

S.S GARG
JUDICIAL MEMBER

rv...