CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 566 of 2009

[Arising out of Order-in-Original No. 113/2009 dated 24/08/2010 passed by Commissioner of Customs, Cochin]

Yes Pee Sons Enterprise
Padmavilason Enterprises S.p. Fort Hospital
Trivandrum-23

Appellant(s)

VERSUS

C.C.
Cochin-cus
Customs House, Cochin-9.

Respondent(s)

Appearance:

Shri Manoj Pillai, Advocate
TAXAIDE
AH-116. 7TH MAIN ROAD, ANNA NAGAR
CHENNAI
TN
400040

For the Appellant

Shri Madhup Sharan, Asst. Commissioner(AR)
Shri Rama Holla, Superintendent(AR)

For the Respondent

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20260 / 2020

Date of Hearing: 27/11/2019
Date of Decision: 26/02/2020

Per : S.S. GARG

The present appeal is directed against the impugned order dt. 24/08/2009 passed by the Commissioner of Customs whereby the Commissioner has confiscated the goods under Section 111(o) of the Customs Act, 1962 but allowed redemption of the same on payment of fine of Rs.50,000/- and also imposed penalty of Rs.5000/- on the appellant under Section 112(a) of the Customs Act, 1962.

2. Briefly the facts of the present case are that a show-cause notice dt. 25/02/2009 was issued to the appellant stating that on 03/11/2008, the Superintendent of Customs visited the building under construction of the appellant and found that the appellant have not submitted the installation certificate nor applied for any extension of time even after the period prescribed of 6 months from the date of import has elapsed. Statement of the importer was recorded under Section 108 of the Customs Act and the goods were seized. After following the due process, the Commissioner found that the appellant has not submitted installation certificate within the prescribed period of 6 months and did not seek extension of time and hence the Commissioner ordered for confiscation of the goods totally valued at Rs.25,41,411/- but allowed the redemption on payment of fine of Rs.50,000/-.

3. Heard both sides and perused the records.

4. Learned counsel for the appellant submitted that the impugned order imposing redemption fine of Rs.50,000/- and penalty of Rs.5000/- on the appellant is not sustainable in law as the same has not been passed without properly appreciating the facts and the law. He further submitted that the appellant had taken 3 EPCG licences viz. i. 5330000969 dt. 30/03/2009; ii. 5330000969 dt. 30/03/2009 & iii. 5330001057 dt. 23/08/2007 for import of hotel equipments at concessional rate of duty. He further submitted that the imported goods were not installed in the hotel within 6 months and no application for extension of time was submitted to the Customs as required under Notification No.97/2004 dt. 17/09/2004. The condition of the notification was that if the goods are not installed within 6 months or within such extended period as Customs may allow,

importer shall pay full duty and penalty. He further submitted that after expiry of 6 months, imported goods under EPCG No.5330000969 were installed and installation certificate was filed before the DGFT and no copy was submitted to the Customs. The Deputy Commissioner of Customs initiated action for irregularity and issued show-cause notices. He further submitted that installation in respect of other two EPCG licences was also completed though very delayed and certificates produced before the Customs authorities. The Deputy Commissioner confirmed the demand in respect of all the 3 EPCG imports but did not impose any finep or penalty and appellant filed appeal before the Commissioner(Appeals) and in two cases Commissioner dropped the demand but in one case, the Commissioner(Appeals) remanded the matter to the original authority and the original authority imposed fine and penalty which is not justified in the facts and circumstances of the case.

5. On the other hand, the learned AR defended the impugned order and submitted that the appellant violated the conditions of the Notification No.97/2004 because he did not submit the installation certificate within 6 months and further he did not seek extension of time from the Customs. He further submitted that imposition of fine and penalty is justified because the appellant has violated the condition of the notification.

6. After hearing both sides and perusal of the material on record, we find that admittedly, in the present case, the appellant has violated the conditions of the notification no.97/2004 dt. 17/09/2004. Further we find that the imported goods were not installed within 6 months and no application for extension of time was submitted to the Customs as per the condition of the notification. Further we find that the Commissioner(Appeals) after considering all the submissions of the appellant has come to the conclusion that the appellant has violated the condition of the Notification No.97/2004 and consequently has

imposed redemption fine of Rs.50,000/- and penalty of Rs.5000/- on the appellant under Section 112(a) of the Customs Act, 1962. We do not find any infirmity in the imposition of redemption fine and penalty in the facts and circumstances of the case since the appellant has not complied with the conditions of the notification No.97/2004 dt. 17/09/2004. Hence the impugned order is upheld by dismissing the appeal of the appellant.

(Order was pronounced
in Open Court on **26/02/2020**)

(S.S GARG)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

Raja...