CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 351 of 2010

[Arising out of No. 67-2009 dated 24/02/2010 passed by Commissioner of Customs(Appeals), Cochin]

C.C.
Cochin-cus Appellant(s)
Customs House, Cochin-9.

VERSUS

Yes Pee Sons Enterprise
Padmavilason Enterprises S.p. Fort Hospital Respondent(s)
Trivandrum-23

Appearance:

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

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

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

Final Order No. 20259 / 2020

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

Per : S.S. GARG

The present appeal filed by the Revenue is directed against the impugned order dt. 18/11/2009 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) has set aside the Order-in-Original and allowed the appeal of the respondent.

2. Briefly the facts of the present case are that the respondent imported capital goods under EPCG licence No.5330000969 dt. 30/03/2006 vide Bill of Entry No.176654, 186675 dt. 12/04/2006 and 28/09/2006 respectively. They claimed the benefit of Notification No.97/2004. As per the condition of the notification, the imported capital goods has to be installed in the importer's factory or premises and a certificate from jurisdictional DC/AC of Central Excise had to be produced confirming installation and use of capital goods in the importer's factory or premises, within six months from the date of completion of the imports or within such extended period as per the DC/AC of Customs may allow. In this case, as the importer failed to produce the installation certificate (IC) in time and a show-cause notice was issued and duty amount of Rs.23,50,295/- was confirmed with interest by original adjudicating authority. Importer filed appeal before Commissioner(Appeals) and the Commissioner(Appeals) vide the impugned order set aside the Order-in-Original and allowed the appeal of the respondent/importer.

3. Heard both sides and perused records.

4. The learned AR appearing for the Revenue submitted that the impugned order passed by the Commissioner(Appeals) is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that the respondent submitted the installation certificate after the expiry of 6 months period provided in the Notification. He further submitted that the importer has not requested for any extension of time as specified in the notification. He further submitted that the certificate submitted does not indicate the date of installation. He also submitted that exemption notification has to be strictly interpreted and considered according to the plain reading of words used therein.

5. On the other hand, the learned counsel for the respondent defended the impugned order and submitted that the only lapse on the part of the importer is that he did not submit the installation certificate within the time as prescribed under the Notification. He further submitted that due to the wrong understanding of law, appellant could not apply for extension of time and also submitted that each and every item imported under the Bill of Entry was installed in the hotel project which was confirmed by the Central Excise officers after visiting the premises of the respondent. Learned counsel for the importer further submitted that Revenue filed two identical appeals C/351/2010 and C/352/2010 and appeal No.C/352/2010 has been withdrawn by the Department on 31/08/2016 on the ground of monetary limit. He also submitted that the issue in the present case is identical as in appeal which has been withdrawn by the Customs.

6. After considering the submissions of both the parties and perusal of the material on record, we find that admittedly the installation certificate was not submitted within the time as per the Notification No.97/2004 dt. 17/09/2004. We also find that the importer has submitted that on account of wrong understanding of law, they could not apply for extension of time which was provided in the notification itself. We also find that all the items imported have been installed in the hotel project of the importer and the same was confirmed by the local Central Excise officers after visiting the premises of the importer. Further we find that the Commissioner(Appeals) has noted in the impugned order that delay in submission of the installation certificate can be treated as only a technical error due to the appellant's ignorance and there was no evidence to show that they had concealed anything. Further we find that the Commissioner(Appeals) has relied upon the decision in the case of Indian Aluminium [1992(59) ELT 168] wherein it was held that lapses of technical errors and minor procedural infractions are required to be ignored and cannot be allowed to come in the way of a benefit,

otherwise due, in case substantial compliance with the essential features of the scheme are shown. In view of the reasoning given by the Commissioner(Appeals) allowing the appeal of the importer, we do not find any infirmity in the impugned order which is upheld by dismissing the appeal of the Revenue.

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

(S.S GARG)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

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