IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

C/261 – 263/2012

(Arising out of Order-in-Appeal. C. Cus. No. 746-748/2012 dated 27.07.2012 passed by the Commissioner of Customs (Appeals), Chennai).

CC (Port-Export), Chennai : Appellant

Vs.

1. M/s. New Karunai Granites : Respondent
2. Shri Karunakaran
3. Shri Arun Kumar

Appearance

Shri Arjun Ragavendra, DC (AR)
for the Appellant

Shri Hari Radhakrishnan, Advocate,
for the Respondent.

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing/Decision: **04.6.2018**

FINAL ORDER No. **41767-41769/2018**

Per: Madhu Mohan Damodhar

All the three appeals relating to the same dispute they have taken up together for common disposal.

2. The facts of the case are that the issue concerns two consignments of polished granite slabs and three past

consignments of the same goods imported under the name of N/s. New Karunai Granites (the respondents in appeal No. C/261/2012). The goods had initially imported by M/s. Swathi Enterprises (Proprietor Shri Arun Kumar, respondent in C/263/2012) for job works namely, conversion into flower vases and are re-export to the foreign supplier. The Bills of Entry were filed by the respondent No.1 on the basis of high seas sale from M/s. Swathi Enterprises to them. Past consignments involving the Bills of Entry No.525366 dated 31.05.2010, 709681 dated 04.12.2010 and 741539 dated 06.01.2011 were cleared for home consumption without any objection at that point of time. However, when the live consignment goods covered under the Bills of Entry No. 4823110 dated 03.10.2011 and 4908577 dated 13.10.2011 came up for clearance, it appeared to the department that M/s. New Karunai Granites had entered into a 'fake' high sea sale agreement with M/s. Swathi Enterprises and filed the subject Bills of Entry to circumvent the conditions of the Notification No. 32/1997-Cus. dated 01.04.1997 and avail unintended duty benefits. It was alleged that the imported materials were in fact supplied for execution of job work order by Swathi Enterprises and not by New Karunai Granites. The Department also alleged that conditions requiring compliance with Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods Rules 1996) (herein after referred as Rules) were also violated. These allegations were translated into a SCN dated 22.05.2012 interalia proposing denial of benefit under the said notification, to recover duty forgone along with interest and imposition of penalties under various provisions of law. In adjudication vide order dated 12.06.2012, the live consignments were confiscated, however allowed to be redeemed on payment of fine of Rs.1,00,000/-; the live as well as the post consignments were ordered to be assessed to duty on merits by denial of Notification No. 32/1997-Cus.; penalty of Rs. 50,000/- imposed on each on all the three noticees under Section 112 (a) of the Customs Act, 1962; penalty of Rs. 13,86,355/- imposed on New Karunai Granites under Section 114A ibid and penalty of Rs. 50,000/- imposed each on Mr. N. Karunakaran and Mr. Arun Kumar (two other respondents in appeal No. C/262/2102 & C/263/2012) under Section 114AA of the Act ibid. In appeal, the Commissioner (Appeals) vide the impugned order dated 27.07.2012 set aside the demand in respect of the past consignments on the basis of merits and time bar and in respect of live consignments allowed the goods to be released to M/s. Swathi Enterprises. The lower appellate authority set aside the order of the original authority in toto.

3. Aggrieved, department is in appeal.

(i) The Commissioner has erred in holding M/s. Swathi Enterprises as owner of the goods, for the reason that the supplier had not sold the goods to M/s. Swathi Enterprises and the supplier had sent it only for jobbing. Supplier only is the owner of the goods. In the absence of sale consideration between them, the high Sale agreement entered into between M/s. Swathi Enterprises and M/s. New Karunai Granites will be illegal, without the sanction of law and to be treated as null and void. But, the Commissioner (Appeals) had not discussed the validity of the "High Sea Sale Agreement" as sale is forbidden by condition (iii) of the notification No. 32/1997-Cus. as brought out in para -3 above herein. Hence as brought out clearly in para 5.2 & 5.3 supra, the "High Sea Sale agreement" without any sale consideration, between the H.S. Seller & H.S. buyer, is nothing but a fake and false agreement with full knowledge, of all the three appellants who have consciously and knowingly, entered into such a fake and false "No Sale High Seas Agreement", by misguiding and suppressing the facts to D.C.C.E, Tambaram.

(ii) In the instant case, the supplier continues to be the owner of the goods and the importer shall receive only the charges for having done the job-work. He does not become the owner of the goods, at any stage/at any point of time as he is only a "Jobber". Further, in this case, as per the terms and conditions of bond executed by the second importer (HSB), with D.C. Central Excise, in pursuance to the (invalid) H.S.S. agreement, they (second exporter HSB) should have exported and not the first importer (HSS). But actually the first importer (HSS) exported vide S/Bs in their name (only) and realized foreign exchange, which is against the terms of bond accepted by the second importer (HSB). All this exercise is undertaken by suppressing the vital facts from the competent authority.

(iii) The finding of the Commissioner (Appeals) that the department has not able establish any Revenue loss is not borne by the fact.

(iv) The adjudicating authority had discussed all aspects in detail in the original order, however, the Commissioner (Appeals) has failed to consider these aspects.

4. On behalf of the department, the Ld. AR, Shri Arjun Raghavendra, DC, reiterated the grounds of appeal.

5. On the other hand, the Ld. Advocate Shri Hari Radhakrishnan, submitted that the goods had been cleared by New Karunai Granites in respect of the past consignments, had been job worked upon and were exported to the same foreign supplier and that they have received the export proceeds thereon. In respect of the live consignments, both the Bills of Entry were initially filed by M/s. New Karunai Granites. Subsequently, they were amended in the name of M/s. Swathi Enterprises. Subsequent to the order of the Commissioner (Appeals) (impugned order) the goods have been cleared, job worked upon and re-exported. The Ld. Advocate submitted a copy of the certificate dated 05.08.2013 in respect of his averment wherein the Bill of Entry No. 4908577 & 4823110 relating to the live consignments have been indicated therein.

6. Heard both sides and have gone through the facts.

7. It is not disputed that the goods though cleared by M/s. New Karunai Granites have been nonetheless been subjected to job work as per the directions of the foreign supplier. There is also no dispute that the goods after completion of job work have been re-exported and the export proceeds thereof realized. While the department has raised the allegation that the high sea Sale agreement is "fake" there has been no evidence brought forth to substantiate the same. In respect of the live consignments, the Ld. Advocate even produced the export certificate which indicates that these consignments too have been re-exported after being job worked upon. This being so, we are unable to find fault with the conclusions arrived at by the lower authority in paragraphs 8 to 10 of the impugned order. In view thereof, no merit is found in the appeals filed by the department, for which reason they are dismissed.

(Order dictated and pronounced in the open Court)

(P.DINESHA)
MEMBER (JUDICIAL)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

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