CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHENNAI

Regional Bench – Court No. III

Customs Misc. [ROM] Application No. 40357 of 2018
(on behalf of Respondent)
In
Customs Appeal No. 271 of 2010

(Arising out of Order-in-Original No. 138/2010 dated 04.03.2010 passed by the Commissioner of Customs, Air Cargo Complex, Meenambakkam, Chennai – 600 027)

M/s. Bramhani Industries Ltd., : **Appellant**
Plot No. 1121, S.No. 403/1,
Road No. 54, Jubilee Hills,
Hyderabad

VERSUS

The Commissioner of Customs : **Respondent**
(Airport & Air Cargo)
Integrated Cargo Complex, Meenambakkam,
Chennai – 600 027

APPEARANCE:

None for the Appellant

Ms. T. Usha Devi, Authorized Representative for the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. MADHU MOHAN DAMODHAR, MEMBER(TECHNICAL)

MISC ORDER NO. 40269 / 2019

DATE OF HEARING: 29.04.2019

DATE OF DECISION: **30.04.2019**

PER BENCH :

The Revenue has filed the above Miscellaneous Application for rectification of mistake of Final Order No. 42561-42563/2017 dated 02.11.2017. The relevant portion of the Miscellaneous Application filed by the Revenue is as under :

"5. Aggrieved by the O-in-O dated 04.03.2010, the importer had filed an Appeal before Hon'ble CESTAT, Chennai; in Appeal No. C/271/2010 arising out of O-in-O dated 04.03.2010 Hon'ble CESTAT had observed that (the related Para's 10.4, of the CESTAT order is reproduced below for reference):-

Para-10.4 *"in respect of Appeal C/271/2010, we note, however, that the goods had already been cleared out of customs charge and were not available for confiscation and their confiscation is not justified. As per the law laid down by higher appellate courts,* ***when the goods are not available****, there can be no confiscation, unless and of course, they have been cleared under bond, etc. which is admittedly not the case herein. This being so, that part of the impugned order No. 138/2010 dated 04.03.2010 ordering confiscation of impugned goods as also ordering redemption fine of Rs. 1,00,00,000/- under Section 125 of the Customs Act is not justified by law and is therefore set aside. So ordered."*

6. The Hon'ble CESTAT Final Order No. 42561-42563/2017 dated 02.11.2017 in respect of the Appeal No. C/271/2010 is not proper. The Tribunal had overlooked the orders of adjudicating authority by setting aside the redemption fine of Rs. 1,00,00,000/-. The respondent/importer had deliberately misguided the Tribunal to avoid payment of redemption fine. The impugned goods are very much available in the customs area i.e., with the custodian M/s. AAI cargo logistics and allied services company ltd. – Custodian and M/s. Esquire Express India Pvt. Ltd. premises and the same has been confirmed by the investigation branch (SIIB) – Air Cargo Complex, New Customs House, Meenambakkam, Chennai; vide ***"MAHAZAR" dated 16.03.2009 and 08.05.2009*** *drawn through the F. No. S.Misc/05/2009-SIIB (ACC)…"*

(Emphasis in original)

2. Today when the matter came up for hearing, none represented the appellant.

3. On the last occasion i.e. on 20.03.2019, none had appeared for the appellant on the ROM Application. The matter was adjourned giving a direction that there shall be no further adjournments. Further, one of the Members who is a party to the said Order is attaining superannuation on 1st May, 2019. For these reasons, we find that granting further adjournment in this matter would not be possible in the interests of justice. The ROM Application is therefore taken up for disposal after hearing the Ld. AR for the Revenue and after perusal of records.

4.1 On behalf of the Revenue, Ld. AR Ms. T. Usha Devi submits that the offending goods relating to Appeal No. C/271/2010 viz. 'Design Engineering Drawings and Technical Documentation for 189M^2 Sinter plant' and 'Design

Engineering and Technical Documentation for $1780M^3$ Blast Furnace' imported under Bills-of-Entry No. 757406 dated 18.12.2008 and DHL Airway Bill No. 992 3540 270 were very much available at the time of adjudication.

4.2 She further submits that the goods are even now available in the custody of the Department, as pointed out in paragraph 8 of the ROM Application. For these reasons, she submits that the decision of the Tribunal setting aside the confiscation of these impugned goods on the grounds that they have been cleared out of customs charge and were not available for confiscation , is a mistake apparent on the face of record and requires to be rectified.

5. On re-examining the facts, we find that there has indeed been an error apparent on the face of record. Paragraph 24 of the impugned Order-in-Original clearly indicates that the goods were "physically seized on 16.03.2009" and the goods were only allowed bonding under Section 49 of the Customs Act thereafter. In paragraph 32 of the said order, the adjudicating authority has observed that both the consignments were not given 'out of charge'.

6. The Revenue along with their aforesaid ROM Application, has also attached copies of Mahazar dated 16.03.2009 and 08.05.2009. The goods that have been cleared are the main equipments viz. $189M^2$ Sinter plant and $1780M^3$ Blast Furnace. However, the impugned goods relating to Appeal No. C/271/2010 namely 'Design Engineering Drawings and Technical Documentation for $189M^2$ Sinter plant' and 'Design Engineering and Technical Documentation for $1780M^3$ Blast Furnace' are still available.

7. Viewed in this light, we find merit in the ROM application filed by the Revenue. There indeed has been an error apparent on the face of record as pointed out by the Revenue. In the event, paragraph 10.4 of the impugned Final Order will require to be rectified. Accordingly, we order that paragraph 10.4 is rectified and modified as under :

> "10.4 In respect of Appeal No. C/271/2010 (impugned order No. 138/2010 dated 04.03.2010), the impugned goods have been confiscated under Section 111 (m) ibid and redemption fine under Section 125 ibid of Rs. 1,00,00,000/- has been imposed. We are of the opinion that reduced redemption fine of Rs.

> 15,00,000/- (Rupees Fifteen Lakhs only) will sufficiently meet the interests of justice. So ordered."

8. The Miscellaneous Application filed by the Revenue for rectification of mistake is disposed of on above terms.

(Order pronounced in the open court on **30.04.2019**)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

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