CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. III

Customs Appeal No.40408 of 2019
(Arising out of Order-in-Appeal Sea. C.Cus.II No.33/2019 dt. 31.01.2019 passed by Commissioner of Customs (Appeals-II), Chennai]

M/s.Magal Engg Tech Pvt.Ltd. **Appellant**
Mathur Village, Kanchipuram
Tamilnadu 602 105.

VERSUS

Commissioner of Customs (Chennai – II) **Respondent**
60, Rajaji Salai, Custom House,
Chennai

APPEARANCE :

Shri B.R. Tripathi, Advocate
For the Appellant

Shri B. Balamurugan, AC (AR)
For the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI, C.S., MEMBER (JUDICIAL)

DATE OF HEARING : 05.08.2019
DATE OF DECISION : 09.09.2019

FINAL ORDER No. 41039 / 2019

The brief facts of the case are that the appellants filed Bill of Entry dt. 19.09.2018 for clearance of 6176 kgs. of imported goods declared as "AISI 430 Cold Rolled Stainless Steel Strips in coil". On verification, it was observed by the department that as per the Import Policy the goods "Stainless Steel Plates, Sheets & Strips" require compliance of mandatory BIS standards, and the item under import does not figure in the list of exempted stainless steel grades. Therefore the goods under import need to be of BIS registered and since importer did not possess such a BIS registration certificate for the clearance, it appeared that the appellant has contravened the provisions of FT (DR) Act, 1992 read with the prohibitions imposed under the Steel and Steel Products (Quality Control) Order 2018). After due process of law, original authority passed an order directing absolute confiscation of the goods having assessable value of Rs.10,47,107/-and also directing for safe destruction of the goods at the cost of the importer besides imposing penalty of Rs.10,000/- under Section 112 (a) of the Customs Act,1962. Appellant preferred an appeal before the Commissioner (Appeals) and vide order impugned herein the Commissioner (Appeals) modified the order by setting aside the direction for absolute confiscation and destruction of the goods at the cost of the appellant. The goods were allowed to be redeemed on condition of re-export after payment of redemption fine which was directed to be quantified by the adjudicating authority within 15 days of the receipt of the order. The penalty imposed by the adjudicating authority was not disturbed. Aggrieved by such order of Commissioner (Appeals), the appellants are now before the Tribunal.

2.1 On behalf of the appellant, Ld. Counsel Shri B.R.Tripathi, appeared and argued the matter. He submitted that appellant is aggrieved by the order that goods can be redeemed only for re-export. He adverted to Section 125 of the Customs Act, 1962 and submitted that an option ought to be given to the appellant for redeeming the goods for home consumption. Whenever the option for redemption is given, no condition can be imposed by the adjudicating authority that the goods can be redeemed only for re-export. He relied upon the decision of the Tribunal in Final Order No.A/87587-87588/2018 dt. 24.09.2018 of the Tribunal's Mumbai Bench.

2.2 It is also argued by him that there was no intention on the part of the appellants to import the goods violating provisions of law. The goods in question which are "Cold Rolled Stainless Trips in Coil of AISI 430 grade" were being imported by the appellant and used for the manufacture of Thermostat and steel pressed parts of motor-vehicles which in turn are being supplied to the manufacturers of automobiles such as Ford, Mahindra & Mahindra, Tata Motor and other OEMs. There isno dispute as regards the description of the goods or its quantity or the value declared by the appellants. The appellants filed Bill of Entry on 19.09.2018. The Bill of Lading is dated 01.09.2018. The Mill certificate is dated 24.08.2018. The invoice and packing list both are dated 23.08.2018. The country of origin certificate is dated 03.09.2018. The prohibition through steel control order was introduced with effect from 13.08.2018. The dates and events would show that the importer had not knowingly or deliberately contravened any provisions of the order. Merely because when the goods landed at Chennai Port such prohibitions came into in force the importer/appellant cannot be charged for such acts of omission and commission warranting imposition of penalty on him. He prayed that the goods may be released for home consumption.

3. The Ld. A.R Shri B. Balamurugan supported the findings in the impugned order. He submitted that the Commissioner (Appeals) has set aside the order directing for destruction of the goods. The appellant has been given an option to redeem the goods for the purpose of re-export which is correct. He prayed that there is no grounds for interfering with the impugned order.

4. Heard both sides.

5. The appellant has mainly contested the order given by the Commissioner (Appeals) to redeem the goods for the purpose of re-export only. He has relied on the decision of Tribunal Mumbai Bench in Final Order No. A/87587-87588/2018 dt. 24.09.2018. In the said case, the Tribunal after referring to Section 125 of the Customs Act, 1962 as well as various decisions have observed that no such condition that the goods can be redeemed only for re-export can be imposed. Further, in the case of *HBL Power Systems Ltd. Vs CC Visakhapatnam* – 2018 (3620 ELT 856 (Tri.-Hyd.), similar view was taken. The relevant portion of the said decision is reproduced as under :

> **"11.** The scope of Section 125 of the Act is limited by the words in which it is framed and it is not open to the adjudicating authority or the Tribunal (who are creatures of the statute) to stretch, modify or restrict the scope of this Section; they are bound by it. Hon'ble Supreme Court and High Courts can and do examine the validity of the laws and subordinate legislations and pass judgments annulling or modifying them by neither

the officers nor the Tribunal, as creations of the statute cannot do so. This position has been explained clearly by the Hon'ble Supreme Court in *UOI* v. *Kirloskar Pneumatics Company* 1996 (84) E.L.T. 401 (S.C.) in which it was held as under :

"According to these sub-sections, a claim for refund or an order of refund can be made only in accordance with the provisions of Section 27 which inter alia includes the period of limitation mentioned therein. Mr. Hidayatullah submitted that the period of limitation prescribed by Section 27 does not apply either to a suit filed by the importer or to a writ petition filed by him and that in such cases the period of limitation would be three years. Learned Counsel refers to certain decisions of this Court to that effect. We shall assume for the purposes of this appeal that it is so, notwithstanding the fact that the said question is now pending before a larger Constitution Bench of nine Judges along with the issue relating to unjust enrichment. *Yet the question is whether it is permissible for the High Court to direct the authorities under the Act to act contrary to the aforesaid statutory provision. We do not think it is, even while acting under Article 226 of the Constitution. The power conferred by Article 226/227 is designed to effectuate the law, to enforce the Rule of law and to ensure that the several authorities and organs of the State Act in accordance with law. It cannot be invoked for directing the authorities to act contrary to law. In particular, the Customs authorities, who are the creatures of the Customs Act, cannot be directed to ignore or act contrary to Section 27, whether before or after amendment. May be the High Court or a Civil Court is not bound by the said provisions but the authorities under the Act are. Nor can there be any question of the High Court clothing the authorities with its power under Article 226 or the power of a Civil Court. No such delegation or conferment can ever be conceived.* We are, therefore, of the opinion that the direction contained in Clause (3) of the impugned order is unsustainable in law."

12. We also find that not only Section 125 but no Section of the Customs Act, 1962 gives any officer the power to compel anyone to import or export or re-export. This Section also does not give the Adjudicating Authority the right to give a conditional redemption saying "you can redeem only if you agree to re-export". In case of prohibited goods the adjudicating authority has only two options :

(a) to allow redemption on payment of fine; or

(b) to not allow redemption.

13. In view of the above, we find that the condition in the Order-in-Original that the goods should be re-exported after redemption is liable to be set aside and we do so.

14. Appeal is allowed to the extent that the condition in the Order-in-Original that the goods should be re-exported after redemption is set aside."

The aforesaid decision has been affirmed by Hon'ble Andhra Pradesh High Court as reported in 2019 (367) ELT 154 (A.P).

6. After considering the facts as well as following the decisions cited above, I am of the view that order passed by the Commissioner

(Appeals) that the goods can be redeemed only for re-export is unjustified. The impugned order is modified to the extent of setting aside the direction by the commissioner (Appeals) that the goods can be redeemed only for re-export. As already directed by the Commissioner (Appeals), the adjudicating authority shall quantify the redemption fine payable by the appellant within 30 days from the date of receipt of certified copy of this order. No other interference is made in respect of the penalty imposed. The appeal is partly allowed in above terms.

(Order pronounced in court on 09.09.2019)

(Sulekha Beevi, C.S)
Member (Judicial)

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