IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH - COURT NO. – III

Customs Appeal No. 40268 of 2019

(Arising out of Order-in-Appeal Sea C.Cus.II No.2/2019 dt. 10.01.2019 passed by the Commissioner of Customs (Appeals-II), Chennai)

Commissioner of Customs **Appellant**
Commissionerate II
Custom House, 60, Rajaji Salai,
Chennai 600 001

Vs.

Shree Salasar Tools **Respondent**
Shop No.307, 3rd floor,
Metro Tower Ring Road,
Surat,
Gujarat 395 002

APPEARANCE:

Ms. T.Usha Devi, DC (AR) For the Appellant
Shri B. Satish Sundar, Advocate for the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri P. Anjani Kumar, Member (Technical)

Final Order No. 41372 / 2019

Date of Hearing: 19.11.2019
Date of Decision: 19.11.2019

Per P. Anjani Kumar

The respondent i.e. Shree Salasar Tools had filed a Bill of Entry No.6974966 dated 27.06.2018 for the clearance of various goods declared as "Baloon machine, plastic balloon pump, party throw flower, plastic clothing accessories, load cell, embroidery machine needle, glitter paper encoder etc. from People's Republic of China. On examination, it was found that, inter alia, the items at Sl.No.2, declared plastic balloon pump were found to be plastic hand pump and not electric pump; sewing machine needles imported from China attract Anti Dumping Duty (ADD) as per Notification No.31/2017-Cus (ADD) dt.22.06.2007. The respondents waived the SCN and lower adjudicating authority after following due process re-determined the value of the goods at Rs.1,32,72,600/- under Rule 9 of Customs Valuation Rules, 2007, demanding differential duty of Rs.49,16,950/- along with interest and Anti Dumping Duty on items at Sl.Nos.6 & 7 amounting to Rs.89,74,456/- while proposing to confiscate the goods under Sections 111 (l) and (m) of Customs Act, 1962, while giving option to redeem the goods on payment of fine in lieu of confiscation of Rs.35 lakhs, while imposing penalty of Rs.1 lakh on the appellant under Section 112 (a) of the Customs Act,1962. Ld. Commissioner (Appeals) vide order dt. 16.10.2018, on appeal filed by the respondent remanded the matter back to the original authority for determination of the classification of "Embroidery machine needle", its classification and applicability of anti dumping duty. Meanwhile, the department was also in appeal before the Commissioner (Appeals) that Board's circular No.24/2011 dt. 31.05.2011 provide for monetary limits for adjudication of cases by various grades of officers and therefore the instant case is required to be adjudicated by the Commissioner of Customs and not by the original adjudicating authority as per Section 122 of the Customs Act, 1962. Ld.

Commissioner (Appeals) vide order dt. 10.01.2019 has rejected the appeal of the Revenue. Hence Revenue is in appeal against both the orders.

2. Heard both sides and perused the records of the case.

3. On-going through the records of the case and the rival submissions, we notice that the amount of duty involved in the case is Rs.1,38,91,406/-. Therefore, we find that original authority has exceeded the breach as contained in the circular cited above and has decided the issue which is beyond his jurisdiction in terms of monetary limits prescribed by the Board's Circular No.24/2011-Cus. dated 31.05.2011. Under the circumstances, we find that an order passed beyond the jurisdiction is not sustainable and is required to be set aside. We find that to this extent, the impugned order also is liable to be set aside as the same did not consider the basic limits for adjudication proceedings prescribed by the Board and powers conferred under Section 12 of the Customs Act, 1962. Therefore, we find that the issue requires to go back to the competent authority for re-adjudication after following the principles of natural justice. Ld. Counsel for the appellants, while expressing no objection for remanding the case back to the competent authority, requests that as life consignments are pending, a time frame for adjudication of the case may be put in place. We find such a request is acceptable in the interest of justice.

3. In view of the above, the order of the Commissioner (Appeals) is set aside and matter remanded to the competent authority who shall re-adjudicate the case within 12 weeks of receipt of this order.

Needless to say that the appellants will be given an opportunity of being heard.

(Operative part of the order pronounced in open court)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

(**P. ANJANI KUMAR**)
Member (Technical)

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