IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. IV

Customs Appeal No. 42148 of 2014

(Arising out of Order-in-Appeal C.Cus No. 58/2009 of common impugned Order-in-Appeal C.Cus. Nos. 57-61/2009 dated 29.01.2009 passed by the Commissioner of Customs (Appeals), 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Tirupathi Balaji Overseas, **: Appellant**
C-48/3, Lawrence Road Industrial Area,
Delhi – 110 035

VERSUS

The Commissioner of Customs, **: Respondent**
(Seaport-Import),
No. 60, Rajaji Salai, Custom House,
Chennai – 600 001

APPEARANCE:

Shri. N. Viswanathan, Advocate for the Appellant

Ms. K. Komathi, Authorized Representative (A.R.) for the Respondent

CORAM:

HON'BLE MR. C. J. MATHEW, MEMBER (TECHNICAL)
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 41728 / 2019

DATE OF HEARING: 13.12.2019

DATE OF DECISION: 13.12.2019

Order Per : Hon'ble Mr. P. Dinesha

Brief facts are that the appellants had imported CFL lamps with/without choke from China during August to December 2002. As per Notification No. 128/2001-Cus. dated 21.12.2001, issued provisionally and effective up to and inclusive of 20.06.2002, Anti-Dumping Duty (ADD) shall be imposed on CFL with/without choke originating in or exported from China or from Hong Kong to India. The appellant paid the duty under provisional assessment pending clarification regarding the validity of the Anti-Dumping Duty Notification No. 128/2001. When a subsequent Notification was issued finalizing the above Notification vide Notification No. 138/2002 dated 10.12.2002, making the duty payment effective from 21.12.2001, the Department raised demand for the differential duty that had arisen due to time gap. The appellant having not attended the personal hearings fixed by the Department, the Original Authority issued Orders-in-Original confirming the demand. In appeal, the Commissioner (Appeals) vide interim order directed the appellant to pre-deposit the duty along with interest, but however, the appellant having failed to do the same, the appeals were dismissed for non-compliance with pre-deposit vide Orders-in-Appeal C.Cus. No. 736-746/2004 dated 30.09.2004. The appellant preferred appeals before the Tribunal and the Tribunal vide Final Order Nos. 809-815/2005 dated 07.06.2005 remanded the issue to the First Appellate Authority to pass a fresh/speaking order on the assessee's stay applications.

2. In *the de novo* appeal proceedings, the Commissioner (Appeals) vide detailed interim order dated 02.02.2005, directed the appellant to pre-deposit 75% of the demanded amount confirmed by the Original Authority. However, the appellant, without complying with the interim order, chose to submit a petition seeking modification of the interim order, after completion of the compliance period. Thereafter, the Commissioner (Appeals) vide common Orders-in-Appeal C.Cus. No. 224-227, 236, 471/2006 dated 21.03.2006 rejected the appeals for non-compliance of pre-deposit. The above Order-in-Appeal was again appealed before the Tribunal and again, this Tribunal vide Final Order Nos. 14-20/2007 dated 04.01.2007 directed the Commissioner (Appeals) to pass speaking orders on merit in accordance with law and principles of natural justice, without insisting on pre-deposit. The Revenue went in appeal against the aforesaid Final Orders of the Tribunal before the Hon'ble

High Court of Madras, but however, vide Order dated 31.03.2008 the same was dismissed by the Hon'ble High Court of Madras.

3. In view of the above remand order of the Tribunal dated 04.01.2007, the First Appellate Authority after going through the submissions made by both sides, concluded vide impugned order dated 29.01.2009 that the demand for Anti-Dumping Duty confirmed by the Original Authority was correct and upheld the same. Aggrieved, the assessee has preferred the present appeal before this forum.

4. Today, when the matter was taken up for hearing, Shri N. Viswanathan, Learned Advocate appearing for the assessee-appellant, submitted that the issue to be decided is, "whether Anti-Dumping Duty can be levied during the interregnum period from 21.06.2002 to 09.12.2002, i.e., from the date of provisional Anti-Dumping Duty Notification and the imposition of final Anti-Dumping Duty by subsequent Notification", which now stands settled by the judgment of the Hon'ble Apex Court in the case of *Commissioner of Customs, Bangalore v. M/s. G.M. Exports reported in 2015 (324) E.L.T. 209 (S.C.).*

5. *Per contra*, Ms. K. Komathi, Learned Authorized Representative appearing for the Revenue-respondent, supported the findings in the impugned order.

6. After hearing both sides, we note that an identical issue came up before the Division Bench of this very Tribunal in the case of *M/s. Picasso Overseas v. Commissioner of Cus. (Imports), Chennai in Customs Appeal No. 176 of 2009* and this Tribunal vide *Final Order No. 41505 of 2017 dated 04.08.2017* after following the decision of the Hon'ble Apex Court in the case of *M/s. G.M. Exports (supra),* has set aside the demand towards Anti-Dumping Duty. We see no justifiable reasons to deviate from the decision since the Revenue has not been able to distinguish the above case, nor has it filed any

contrary decisions. Accordingly, we are of the view that the impugned demand cannot sustain and hence, the impugned order as also the demand are set aside.

7. The appeal is allowed with consequential benefits, if any, as per law.

(Operative part of the order pronounced in the open court)

Sd/-	Sd/-
(C.J. MATHEW) MEMBER (TECHNICAL)	**(P. DINESHA)** MEMBER (JUDICIAL)

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