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

C/99/2010

(Arising out of Order-in-Original No. 2/2009 dated 29.10.2009 passed by the Commissioner of Central Excise-IV, Chennai).

M/s. R.R. Donnelley Publishing Indiia Pvt. Ltd. Appellant

Vs.

CC (Port – Import), Chennai Respondent

Appearance

Shri S. Viswanathan, Advocate,
for the Appellant

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

CORAM :

Hon'ble Smt. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Date of Hearing/Decision: 14.11.2017

FINAL ORDER No. 42929/2017

Per: B. Ravichandran

The appeal is against the order dated 29.10.2009 of the Commissioner (Appeals), Central Excise, Chennai.

2. The appellants are 100% EOU engaged in the manufacture of books and publications for industrial purpose. They have after due authorization of procurement Certificate from the jurisdictional

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Central Excise Officer imported various items without payment of customs duty. Based on subsequent verification, the jurisdictional Central Excise Officer initiated proceedings against the appellant on the ground that some of the items imported by the appellants may not qualify as capital goods and the exemption already allowed is not sustainable. The impugned order is upholding such view and confirming the customs duty liability of Rs. 7,86,414/-. The goods were also ordered to be confiscated and penalties were imposed.

3. The Ld. Advocate for the appellants submitted that the impugned order is not justifiable on more than one ground. First of all, the goods were imported, have due authorization by the jurisdictional Central Excise Officer. The goods were duly assessed by the Customs authorities at the time of import. Further, the impugned order interpreted the nature of the goods applying ratio which has no relevance to the facts of the present case. Finally, it is contended that the whole proceedings are premature as the goods are very much in the warehouse and are in the custody and supervision of the jurisdictional Central Excise Officer. There can be no demand on the goods which are still lying in the warehouse. There is no ground to sustain the demand for extended period and penalty.

4. The Ld. AR reiterated the findings of the lower authorities.

5. We have heard both sides and perused the appeal records.

6. Admittedly, the goods were imported, assessed and cleared through customs. These were as per the procurement Certificate issued by the jurisdictional Central Excise Officer. The imports were in terms of authorization given to the appellant by the Development Commissioner, which was followed by the jurisdictional Central Excise Officer. We note that the impugned order independently examined the liability of the appellant for certain goods and held these are not eligible for exemption. Apparently, the terms of bond by the appellant was ~~executed~~ invoked. We note that the goods were duly assessed as capital goods by the competent officer at the port of entry. The same has not been varied by that officer. The goods were in warehouse. In the case of Verifone India Pvt. Ltd. Vs. CC, Bangalore- 2011 (272) ELT 303 (Tri.-Bang.), the Tribunal examining the scope of the very same notification for EOU held that when the goods were in the warehouse without invoking the provisions of Section 72 of the Customs Act, proceedings cannot be held against them. Further, we note in the case of Greenspan Agritech Pvt. Ltd. Vs. CCE, Pune – 2014(313) ELT 431 (Tri.-Mum,), again the Tribunal examined the same notification. It has held that when the appellant is a 100% EOU and the goods imported are used for the intended purpose, no demand will arise. We have examined the impugned order and considering the submissions made by the appellant and decided

Customs, Excise & Service Tax Appellate Tribunal case laws referred above, We find that denial of exemption under notification No. 52/2003-Cus is not sustainable. Accordingly, impugned order is set aside and the appeal allowed.

(Order dictated and pronounced in the Open Court)

(B. RAVICHANDRAN) 14.11.17
MEMBER (TECHNICAL)

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

BB

Customs, Excise & Service Tax Appellate Tribunal

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