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

E/90/2010

(Arising out of Order-in-Appeal No. 62/2009 dated 30.11.2009 passed by the Commissioner of Central Excise (Appeals), Chennai.

CCE & ST, LTU, Chennai — Appellant

Vs.

M/s. T.I. Diamond Chain Ltd., — Respondent

Appearance

Shri K. Veerabhadra Reddy, JC (AR)
for the Appellant

Ms. Swarupa M., Advocate,
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. 42933/**2017**

Per: B. Ravichandran

The Revenue is in appeal against the order dated 30.11.2009 of the Commissioner (Appeals), LTU, Chennai.

2. The respondents are engaged in the manufacture of chains. They imported goods like rubber pads, slates and support plates etc., without payment of duty by availing exemption under

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Notification No. 32/97-Cus. dated 01.04.1997 in terms of Customs (Import of goods at concessional rate of duty for the manufacture of excisable goods) Rules, 1996. They have followed the procedure prescribed under the rules and the said notification. On verification of accounts of the respondent, the Revenue entertained a view that the respondents are using substantial items which are domestically procured and that is against the purported intention of exemption envisaged in the above rules and notification. In other words, the Revenue held a view that the condition of value addition cannot be achieved if significant portion of manufacture involves indigenous items. The original authority vide his order dated 11.12.2008 held that the respondent is liable to pay a differential duty of Rs.66,20,514/- on the goods imported under various Bills of Entry. On appeal, vide the impugned order the Commissioner (Appeals) set aside the original order and held that no duty demand can be confirmed against the appellant. Aggrieved by this, the Revenue is in appeal.

3. The Ld. AR elaborated the grounds of appeal and submitted that the activity of manufacture and export is done on the goods imported without payment of duty. It is clear that the value additions have to be in accordance with the notification. In the present case, substantial use of local items is against the intention of the concession extended to the respondent. The value addition could not be determined properly when substantial items are locally procured. He also relied on the decision of the Hon'ble

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Supreme Court decision in the case of *Prestige Engineering (India) Ltd. Vs. CCE, Meerut*-1994 (73) ELT 497 (S.C).

4. The Ld. Counsel appearing for the respondent submitted that the impugned order has examined the legal provisions and it has correctly upheld the eligibility of the respondent. She relied on the decision of the Hon'ble Bombay High Court in the case of *CC (Imports), Mumbai Vs. Sujag Fine Chemicals (India) Ltd.* - 2013 (295) ELT 32 (Bom.). It is the case of the respondent that there is no stipulation or restriction put on the importer with reference to procurement of local items for use in the job work/manufacturing process.

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

6. We note that the Revenue is pressing its contest only on the ground that the activities under taken by the respondent are much more than simple jobbing and the ratio laid down by the Apex Court in the case of *Prestige Engineering (India) Ltd.* (supra) will make them ineligible for the concession. We note that the decision of the Apex Court has been examined in the impugned order. Relying on the decision of the Tribunal in the case of *Saptagiri Leathers Vs. CC, Chennai* - 2003 (153) ELT 559 (Tri.-Chen.), the Commissioner (Appeals) held that there is no violation of the import conditions by the respondent. He also note that the Hon'ble High Court in the case of *Sujag Fine Chemicals (India) Ltd.* (supra) held that the ratio of the Apex Court decision in *Prestige*

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Engineering (India) Ltd (supra) is with reference to the job work, Notification No. 119/75-CE and has no application to the dispute under Notification No. 32/1997-Cus.

7. On careful consideration of the grounds of appeal, impugned order and case laws, we are of the considered opinion that there is no violation of the conditions of concessional import by the respondents and the ratio adopted in the impugned order cannot be interfered with. As such, the appeal by the Revenue is dismissed.

(Order dictated and pronounced in the Open Court)

(B. RAVICHANDRAN) 15.11.17
MEMBER (TECHNICAL)

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

BB

Customs, Excise & Service Tax Appellate Tribunal

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