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

C/147/2007

(Arising out of Order-in-Appeal No. 68/2006-TTN (CUS) dated 28.12.2006 passed by the Commissioner of Customs & Central Excise (Appeals), Trichy)

CC, Tuticorin : Appellant

Vs.

M/s. DCW Ltd. : Respondent

Appearance

Shri A.Cletus, ADC (AR)
for the appellants

Shri C. Seethapathy, Advocate,
for the Respondent.

CORAM :

Hon'ble Ms. Sulekha Beevi, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision: **07.07.2017**

FINAL ORDER Nos. 41220 **/ 2017**

Per Bench

The above appeal is filed by the department aggrieved by the order passed by the Commissioner (Appeals), who allowed the benefit of exemption of payment of SAD as per the Notification No. 34/1997-Cus dated 07.04.1997 read with Notification No. 34/1998-Cus dated 13.06.1998.

Sulekha Beevi

Excise & Service Tax Appellate Tribunal Customs,

2. The respondent imported 3463.199 MTs of 'Vinyl Chloride Monomer' and filed different Bills of Entry for clearance of the goods. At the time of assessment of Bills of Entry the 'Special Additional Duty' (SAD) of customs introduced in 1998-99 was not levied. The Notification No. 34/1997 exempted the payment of Customs duty and CVD on fulfilment of conditions and the Notification No. 34/1998 exempted the payment of SAD. By another Notification No. 48/1998 dated 17.07.1998, the goods imported under Notification No. 34/1997 was unconditionally exempted from levy of SAD. The department was of the view that since all the Bills of Entry were dated prior to 17.07.1998, the respondent is liable to pay SAD. After adjudication, the original authority confirmed the demand. In appeal, the Commissioner (Appeals) vide order impugned herein set aside the same. Hence this appeal.

3. On behalf of the department, the Ld. AR, Shri A. Cletus, ADC, submitted that the original Notification No. 34/97 imposed certain conditions to be fulfilled in order to be eligible for exemption from payment of Customs duty and CVD. SAD was introduced in the year 1998-99 and the respondent has not debited SAD in their DEPB pass book. The respondent cannot claim exemption from payment of SAD as they have not fulfilled the conditions laid in the Notification No. 34/97. Therefore, demand of differential duty raised ought to have been sustained by the Commissioner

(Appeals). He submitted that the Notification No. 48/98 giving unconditional exemption from SAD came into effect only on 17.07.98 and the respondent's imports all being prior to this date, the exemption cannot be extended unless the conditions in Notification No. 34/97 are fulfilled. He relied upon the judgment of this Tribunal in the case of *M/s. Amar Jothi Plastics and another* vide Final Order No. 41539 – 41540/2016 dated 16.08.16.

4. Against this, Ld. Counsel Shri C. Seethapathy, appearing for the respondent submitted that the Notification No. 48/98 had granted exemption of SAD unconditionally with effect from 17.07.98; that for the interim period there was another Notification N o. 02/2003-Cus (NT) dated 06.01.2003, which laid that SAD is not required to be paid for the imports made during the period from 02.06.98 to 31.07.98. That, as per this Notification, the respondent is not liable to pay SAD. All the Bills of Entry except for one, fall within this period which is from 02.06.98 to 31.07.98 and therefore the Notification becomes applicable to the respondent. In respect of one Bill of Entry dated 393/28.05.98, the Ld. Counsel submitted that the same was prior to the introduction of SAD. He relied on the judgments in the case *of C.J. Shah and Co. Vs. Commissioner* – 2002 (141) ELT 86 (Tri.-Mum.) and also *Bangalore Mono Filaments (P) Ltd. Vs. CC (Sea), Chennai* – 2006 (204) ELT 51 (Tri.-Bang.).

5. We have heard the submissions made by both sides.

6. Ld. AR has relied upon the judgment passed by the Tribunal in the case of M/s. Amar Jothi Plastics and another (supra), wherein an identical issue was considered. We take note of the fact that the Tribunal in the said judgment has disagreed with the judgment passed by the co-ordinate Bench in the case of Bangalore Mono Filaments (P) Ltd. (supra) and ~~this~~ do disallowed the benefit of exemption. However, it is brought to our notice by the Ld. Counsel for the respondent that the Tribunal in the said judgment did not consider the Notification No. 02/2003 as well as the judgment in the case of C.J. Shah and Co. (supra). Notification No. 02/2003 directs that no SAD is required to be paid for the goods imported during the period from 02.06.98 to 31.07.98. The Commissioner (Appeals) has rightly relied upon this Notification to allow the benefit of SAD exemption. Therefore as per the Notification No. 02/2003, the respondents are eligible for the benefit of exemption. We do not find any ground not to allow the same. For the very same reason, we are unable to follow the judgment of the Tribunal in the case of M/s. Amar Jothi Plastics and another (supra).

7. In the result, we find no merit in the appeal filed by the department and the same is dismissed accordingly.

(Order dictated and pronounced in the open Court)

Sulekha Beevi

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

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

BB

Customs, Excise & Service Tax Appellate Tribunal

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