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

Appeal No.C/279/2007

[Arising out of Order-in-Original No.5777/2007 dt. 31.1.2007 passed by the Commissioner of Customs (Export), Chennai]

Commissioner of Customs, (Export-Seaport)
Chennai. Appellant

Versus

Divi's Laboratories Ltd. Respondent

Appearance:

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

None
For the Respondent

CORAM:
Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Madhu Mohan Damodhar, Technical Member

Date of hearing / decision :02.01.2017

FINAL ORDER No. 40022/2017

Per D.N. Panda

None present for the respondent.

2. Revenue's submission is that learned Adjudicating Commissioner should have confirmed the duty liability under Section 28 (2) of the Customs Act, 1962. Perusal of the order reveals that the duty has been confirmed without mentioning the section under which that is confirmed. But the elaboration in the order shows that demand having arisen under Section 28, that is confirmed. Accordingly following the principle laid down by Apex

Customs, Excise & Service Tax Appellate Tribunal

Court in the case of *CCE Calcutta Vs Pradyumna Steel Ltd. – 1996 (82) ELT 441 (SC)* it may be said that mere non-mentioning of provision of law does not make the order fatal. Therefore adjudication order is held to have been confirmed under Section 28 (2) of the Customs Act.

3.1 So far as Revenue's contention that the goods having been imported under a bond, that remains in continuous obligation of the importer to fulfil bond conditions and learned Adjudicating authority, should have imposed redemption fine without any erroneous presumption that the goods have been cleared.

3.2 Revenue is correct to contend as above. We make it clear that the goods imported under bond are not absolute clearance but conditional clearance. Therefore there is concurrent liability in respect of goods cleared under bond attaching an obligation to be fulfilled. Accordingly, redemption fine is imposable when the confiscation was ordered. Therefore for imposition of redemption fine, matter is remanded to the adjudicating authority for issuance of appropriate notice and hear the appellant afresh on that count only to pass an appropriate order recording defence plea, law and evidence.

4. In the result, Revenue's appeal is allowed to the extent indicated above.

(Dictated and pronounced in open court)

09/01/2017

(MADHU MOHAN DAMODHAR)
TECHNICAL MEMBER

6.1.2017

(D.N.PANDA)
JUDICIAL MEMBER

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Customs, Excise & Service Tax Appellate Tribunal

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