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

C/176/2009

(Arising out of Order-in-Appeal C. Cus. No.54/2009 dated 29.1.2009 passed by the Commissioner of Customs (Appeals), Chennai)

M/s. Picasso Overseas — Appellant

Vs.

Commissioner of Customs (Import), Chennai — Respondent

Appearance

Shri N. Viswanathan, Advocate for the Appellant
Shri A. Cletus, Addl. Commissioner for the Respondent

CORAM

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

Date of Hearing / Decision: **04.08.2017**

Final Order No. 41505/2017

Per Bench

The appellants had imported CFL lamps with/without choke from China during the period August to December 2002. As per Notification No. 129/2001 dated 21.12.2001, issued provisionally and effective upto and inclusive of 20.6.2002, Anti-Dumping Duty (ADD) shall be imposed for CFL with/without choke originating in or exported from China or

Customs, Excise & Service Tax Appellate Tribunal from Hong Kong to India. The appellant paid the duty under provisional assessment pending clarification regarding the validity of the ADD 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 of the differential duty which has arisen due to time gap. The appellant did not attend the personal hearing and the original authority issued Order-in-Original confirming the demand. In appeal, the Commissioner (Appeals) directed the appellant to predeposit the duty along with interest and the appellant failed to comply with the same. The appellant then filed appeal before the Tribunal and the Tribunal remanded the issue to the Commissioner (Appeals) for reconsidering the stay application. Vide interim stay order, the Commissioner (Appeals) directed the appellant predeposit 75% of the demand confirmed by the original authority. The appellant failed to comply with the interim order and requested for modification of the same and thereafter the Commissioner (Appeals) rejected the appeal for non-compliance of predeposit order. The appellant once again preferred appeal before the Tribunal and vide Final Order No. 41/2007, the Tribunal directed the Commissioner (Appeals) to pass a speaking order on merits in accordance with law without insisting for any

Customs, Excise & Service Tax Appellate Tribunal predeposit. Revenue filed appeal against the said final order of Tribunal and in respect of six other appellants before the Hon'ble High Court of Madras. The Hon'ble High Court dismissed the appeals filed by Revenue. Thus, in effect, the present appeal was remanded to the Commissioner (Appeals) and vide order impugned herein, the Commissioner (Appeals) upheld the order passed by the original authority who had held that the appellant was liable to pay ADD. Hence this appeal.

2. At the time of hearing, the learned counsel Shri N. Viswanathan submitted that the issue whether ADD can be levied during the interregnum period from 21.6.2002 to 9.12.2002, that is from the date of provisional ADD Notification and the imposition of final ADD by subsequent notification, now stands settled by the judgment of the Hon'ble Apex Court in the case of Commissioner of Customs Vs. G.M. Exports – 2015 (325) ELT 209 (SC).

3. Following the same, we hold that the same is unsustainable. The impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Operative portion of the order was
pronounced in open court)

Sulekha Beevi

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S.)
Member (Judicial)

Rex

Customs, Excise & Service Tax Appellate Tribunal

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