The Commissioner (AR), CESTAT Chennai.

Indirect Tax Bar Association CESTAT, Chennai

1) M/s. Centax Publications (P) Ltd.

2) M/s. Company Law Institute of India (P) Ltd.

3) M/s. Taxindiaonline.com (P) Ltd. Chennai.

4) M/s. Tax Man Allied Services Ltd New Delhi.

5) M/s. Easy Services Tax Online.Com (P) Ltd Ahmedabad.

6) M/s. Lawcrux Advisors (P) Ltd. Faridabad.

7) M/s. Mark Professional Services (P) Ltd.

8) M/s. The ICFAI Society, Hyderabad

9) M/s. Knowledge Processing Pvt Ltd., Delhi

10) Guard File.

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

C/41163 to 41167/2016

(Arising out of Order-in-Appeal No. 33 - 37/2016 TTN(CUS) dated 08.03.2016 passed by the Commissioner of Central Excise (Appeals-II), Trichy).

1. M/s. Arunesh Saw Mills
2. M/s. Azar Timber and Saw Mills
3. M/s. Maheswari Timbers
4. M/s. Shinaga International India Pvt. Ltd.
5. M/s. Sri Laxmi Vijaya Saw Mills

Appellant

Vs.

CC, Tuticorin

Respondent

Appearance

Shri N . Viswanathan, Advocate
for the appellants

Shri S. Govindarajan, AC (AR)
for the Respondent.

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Technical Member

Date of Hearing/Decision: 31.03.2017

FINAL ORDER Nos. 40611-40615 /2017

All these appeals being on similar issue, they are taken up together for common disposal.

Customs, Excise & Service Tax Appellate Tribunal

2. For convenience, the facts of the appeals in M/s. Sri Laxmi Vijaya Saw Mills (C/41167/2016) are brought out as under:-

i) In-bond Bill of Entry No. 9845217 dated 13.04.2013 was filed on behalf of M/s. Golden Timbers for warehousing imported "Papua New Guinea Origin Kwila Regular and Small round logs" supplied by one M/s. Adonis Limited, Hongkong. On execution of the warehousing bond, the in-bond Bill of Entry was assessed for warehousing. Bill of lading and other invoices and other related documents submitted along with the Bill of Entry were also in the name of M/s. Golden Timbers. While the goods still remained in the warehouse, a letter dated Nil in the name of M/s. Golden Timbers was apparently submitted to the Asst. Commissioner of Customs (Imports), stating that the supplier has cancelled the sale since the importer was not in a position for open the LC for the imported goods due to economic reasons and hence consignment has been sold to the other importer. Letter also stated that M/s. Golden Timbers did not have any objection to transfer the goods to the new importer and they are willing to pay rent and other charges and penalties if any on the warehoused goods after relinquishment of their title. Subsequently, the appellant herein, through their customs broker requested for amendment in the Bill of Entry in their favour as the goods have been sold to them. The matter was taken for investigation by the officers of SIIB, Customs House, Tuticorin. IT appeared to the department that the letter conveying cancellation of sale etc., was

Customs, Excise & Service Tax Appellate Tribunal

not issued by M/s. Golden Timbers and that the imported goods warehoused did not belong to them. Statement of one Shri Nisar Ahmed, Partner of M/s. Golden Timbers was recorded, who interalia stated that in respect of the present consignment they had neither placed any purchase order or received any proforma invoice or any other related documents from the purported supplier M/s. Adonis, Hongkong and they have not filed the Bill of Entry either. Photocopy of the letter purported to be from M/s. Golden Timbers conveying cancellation of the same was shown to him and there upon he has stated that the signature in the said letter is not his signature, they have not authorized anybody to use their IEC number and that the letter head is not their company's letter head. However, statements recorded from the employees of the customs broker do not appear to confirm these allegations of the department.

3. On the other hand, it is seen that in a statement recorded from Shri S. Nelson Arul Raj, Import Manager of the Customs Broker, the said employee has confirmed that they only filed the Bill of Entry No 9845217 dated 13.04.2013, on behalf of M/s. Golden Timbers and the same was filed with their knowledge only and they could not understand why such a statement was given by them before the customs authorities, disowning the imported goods and also why they have stated that the NOC letter was not issued by them. Subsequently, a SCN dated 25.02.2014 was issued to the appellant herein M/s. Sri Laxmi Vijaya Saw Mills, M/s.

Customs, Excise & Service Tax Appellate Tribunal

Golden Timbers, M/s. Adonis, Hongkong, and the customs broker and any other person who claimed to be the owner of the goods, interalia proposing absolute confiscation of the seized goods under Sections 111(d), 111(m) of the Customs Act, 1962, read with Section 7 of Foreign Trade (Development and Regulation) Act, 1992, imposition of penalty on the customs broker under 112 (a) & (b) and 114 AA of the Customs Act, 1962 and imposition of penalty on M/s. Adonis, Hongkong under Section 112 ibid. Pursuant to issue of these notices, appellant M/s. Sri Laxmi Vijaya Saw Mills approached the Hon'ble High Court of Madras and Hon'ble High Court vide its decision dated 20.06.2014 interalia permitted amendment of the Bill of Entry in the name of the petitioner, subject to their production of all the relevant and necessary documents in respect of In-bond Bill of Entry dated 13.04.2013 and enable provisional release of the goods by furnishing a bank guarantee of equal amount of duty in favour of the department pending proceedings initiated. Appeal filed by the department against the order of the Hon'ble High Court of Madras was dismissed and the amendment as directed by the High Court was effected.

4. Subsequently, after due process of adjudication, vide OIO dated 30.04.2015, the original authority confiscated the seized goods, however, gave an option to the appellant M/s Sri Laxmi Vijaya Saw Mills to redeem the same on payment of Rs. 1,50,000/- under Section 125 of the Act. Penalty of Rs. 50,000/- was also

imposed on the customs broker. On appeal, the Commissioner (Appeals), vide impugned order dated 08.03.2016, rejected the appeal of this appellant.

5. The other appeals of M/s. Arunesh Saw Mills, M/s. Azar Timber and Saw Mills, M/s. Maheswari Timbers, M/s. Shinaga International India Pvt. Ltd., (C/41163 to 41166/2016) involve similar facts. In all these cases, appellants herein also preferred appeals before the Commissioner (Appeals), who interalia rejected all the appeals and upheld the orders of the original authority vide the common impugned order dated 08.03.2016. Aggrieved, all these appellants are before this forum.

5.1 On behalf of all these appellants, Shri N. Viswanathan, ld Advocate submitted that in Tuticorin Port it is a regular feature that original importers of logs often seek permission to relinquish their title and obtain amendment to change the name of the importer in the Bill of Entry in favour of new buyer. Ld. Advocate further pointed out that the allegation that the purported letter dated Nil to the Asst. Commissioner informing relinquishing of the title of the goods, which has been referred to in their SCN, and which letter was also referred to in the statement recorded from Shri Nisar Ahmed, Partner of M/s. Golden Timbers has not been provided to them. He drew attention to page-34 of the appeal folder of M/s. Sri Laxmi Vijaya Saw Mills (appeal No. C/41167/2016), whereby M/s. Golden Timbers vide letter dated 30.12.2013, confirmed that

Customs, Excise & Service Tax Appellate Tribunal

it had imported timber logs from M/s. Adonis Ltd., Hongkong, under Bill of Entry No. 9845217 dated 13.04.2013 and also confirmed that the double duty bond had been executed by them. This letter is therefore nothing but the retraction of the statement date 12.12.2013 recorded from one of the partners, Shri Nisar Ahmed. Ld. Advocate contends that the fact of this retraction was not taken into account either by the original authority or by the lower appellate authority. He also submitted written submissions, the main arguments thereunder can be summarized as follows:-

i) The imported wooden timber logs imported are admittedly not prohibited for import and in fact, are freely importable goods; besides there is also no dispute raised by the Revenue regarding its value or rate of duty or quantum of duty payable on the said goods.

ii) The lower appellate authority failed to properly appreciate that Hon'ble High Court in its order having directed the amendment to the original into Bond Bills of Entry substituting their names after due verification of the documents produced by them and the authorities also having been satisfied and carried out the said assessment to allow the release of the goods to them, albeit on a provisional basis, ought to have conceded that in the light of the above directions and compliance the goods were deemed to have been imported by them only.

iii) The question formulated by the lower appellate authority to be answered by her, namely, whether the

Appellants/importers are liable to redeem the goods on payment of a fine under section 125 of the Customs Act, 1962, is correct or not, by itself is erroneous, as she ought to have framed the question as to whether the goods can be held liable to confiscation under section 111(d) and (m) ibid and if so, whether the imposition of redemption fine is justifiable, which failure also totally vitiates the order.

iv) The provisions for confiscation of the goods under section 111 of the Act having referred to various acts of omissions and commissions in respect of the goods imported also warranted the interpretation of the said provisions as only concerning the goods and not any other reasons and therefore also the finding recorded by the original authority which was not properly considered by the appellate authority relating to the IEC renders the orders of the lower authorities adjudging the liability of the timber for confiscation under section 111 (d) and (m) of the Act totally bad in law.

v) Without prejudice to the above submissions appellants submit that since section 111 (d) of the Act only contemplates confiscation of goods imported when prohibited for import and not otherwise, the orders passed by the lower authorities holding the goods liable for confiscation under the said provision is totally devoid of any merits since the timber logs imported are freely importable and no restrictions are imposed for its importation. In any case and without prejudice the appellants submit that section 7 of Foreign Trade (Development & Regulation) Act, 1992 invoked by the original authority by observing that the goods were imported fraudulently without an IEC could in no way support the invoking of section 111 (d) of the Act for the reason that the use of other's IEC even if it were to be admitted without accepting is not a contravention as has been held by the Hon'ble Kerala High Court, Bombay High Court and Mumbai Bench of the Tribunal.

vi) Secondly the into Bond Bills of Entry filed by the original importers having been accepted and assessment completed by the proper officer and p ermission granted to store them in bond, in terms of the provisions contained in the Finance Act the finding of the original authority that the goods were imported fraudulently without a valid IEC is not legally maintainable without a review of the order of assessment passed by the proper officer of customs for the reason of which also the said finding of the original authority is not legally sustainable.

vii) The lower appellate authority also failed to consider that the show cause notice issued in this matter prior to the issue of directions of the Hon'ble High Court, had proposed absolute confiscation of the goods and accordingly issuing the notice jointly to the original importer, the CHA, the overseas supplier and to the appellants and also any other person claiming ownership of the goods, showing that at the

Customs Excise & Service Tax Appellate Tribunal material time customs was not sure as to who is the owner of the goods without even knowing that it is not a matter of concern for administering the customs law in the light of the provisions contained in section 2 (26) of Customs Act, 1962 defining the term importer.

viii) The respondent also ought to have known that the opting importer has been treated to be the importer by amending the Bill of Entry and the subject goods assessed and cleared to him, the action of the authorities below in confiscating the goods and directing the said importer to pay redemption fine when he has not committed any act or omission to render the goods liable for confiscation, makes the order totally bad in law.

5.2 Similar ground of appeal have been submitted in respect of other appeals also.

6. On the other hand, ld AR Shri S. Govindarajan, AC, supports the adjudication.

7. From the facts that emerged, what comes to the fore is that some of the vital documents relied upon by the department have not been provided tothe appellants herein. In response to earlier directions of this Bench, vide letter dated 24.03.2017 submitted by the ld. AR, it is sought to justify that letter dated 30.12.2013 of M/s. Golden Timbers was addressed to the Import section and in that letter nothing was mentioned regarding SIIB and hence the

Customs, Excise & Service Tax Appellate Tribunal

said letter was not reflected in the SCN. It is difficult to accept this assertion when it is obvious that SIIB had commenced investigation much earlier as evidenced by the statements recorded by the officers on 12.12.2013. From the above, there is definitely merit in the ld. Advocate's contentions that they have not been given copies of important documents relied upon and that retraction letters have not been taken into cognizance and in the process the principles of natural justice have been violated. This being the case, I find it proper all these appeals are remitted back to the original authority for denovo consideration. In such denovo proceedings documents relied upon in the SCN shall be provided to them. The original authority will take note of the points discussed above, and will also address the contentions of the ld. Advocate summarized in Paras-5.1 and 5.2. Additional evidence, if required, may be produced by the appellants. The adjudicating authority after due process of law, shall pass a reasoned and speaking order.

(Order dictated and pronounced in the open court)

11/04/2017

(MADHU MOHAN DAMODHAR)
MEMBER TECHNICAL

BB

Customs, Excise & Service Tax Appellate Tribunal

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