IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHENNAI</u>

REGIONAL BENCH – COURT NO. III

CUSTOMS APPEAL NO. 41926 of 2013

WITH

(C/Cross/42498/2013)

(Arising out of Order-in-Appeal No. C. Cus No.814/2013 dated 11.06.2013 passed by Commissioner of Customs (Appeals) 60, Rajaji Salai, Custom House, Chennai 600 001)

The Commissioner of Customs, **: Applicant**
Export Commissionerate,
60, Rajaji Salai,
Custom House Chennai-600 001

VERSUS

M/s. Falcon Tyres Ltd., **: Respondent**
K.R.S. Road, Metagalli,
Mysor- 570 016.

<u>APPEARANCE</u>:

Ms. Anandalakshmi Ganeshram, Assistant Commissioner (in situ)(A.R.)
For the Appellant

Shri N. Viswanathan, Advocate
For the Respondent

<u>CORAM</u>:

HON'BLE MRS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. <u>41143/2023</u>

DATE OF HEARING / DECISION : 18.12.2023

Order : [Per Mrs. Sulekha Beevi C.S.]

This appeal is filed by the Department against the order passed by Commissioner (Appeals) to set aside the demand confirmed by the original authority.

2. Brief facts are that the respondent filed Bills of entry dated 14.12.2010, 23.12.2010, 03.05.2011 and 05.05.2011 for clearance of tyre making machines (old and used) including used Chinese origin tyre curing presses under EPCG scheme. As tyre curing presses of Chinese origin attract Anti-Dumping Duty (ADD) in terms of Notification No. 01/2010 dated 08.01.2010, the respondent was asked to pay applicable Anti-Dumping Duty.

3. In response, the respondent replied that they are not liable to pay ADD as the goods are old and used machines.

4. After due process of law, the original authority re-assessed the bills of entry by confirming the differential duty (ADD).

5. On appeal, the Commissioner (Appeals) set aside the confirmation of ADD. Aggrieved, the Department is now before the Tribunal.

6. The Ld. Authorized Representative Smt. Anandalakshmi Ganeshram supported the findings of the original authority. She submitted that the Commissioner (Appeals) has erred in holding that the imported goods do not attract ADD since they are old and used machines. The Ld. Authorized Representative argued that the Notification 01/2010-Cus. Dated 08.01.2010 does not exclude goods which are used and old. The goods being of Chinese origin, whether old and used, ADD is leviable.

7. It is prayed that the appeal may be allowed.

8. The Ld. Counsel Shri N. Viswanathan appeared and argued for the respondent. It is submitted that the respondent-company has gone into liquidation as

per the order of the NCLT, Bangalore Bench dated 30.12.2019

9. The respondent-company itself being non-existent, the appeal filed by the Department does not survive and is of no consequence. The Department has not participated in the NCLT proceedings.

10. On the issue as to whether the respondent is liable to pay ADD, the Ld. Counsel submitted that such duty is not leviable on old and used goods. The decision of the Tribunal in the case of *Commissioner of Customs v. Trinity Exporters [2019 (369) E.L.T. 1076 (Tri. – Chennai)]* was relied. It is submitted that the respondent has filed cross objection putting forward arguments in support of the order passed by the Commissioner (Appeals) and requested that the same may be considered.

11. The Ld. Counsel prayed that the appeal may be dismissed.

12. Heard both sides.

13. At the outset it has to be stated that the respondent-company has gone into liquidation as per the order of the NCLT, Bangalore Bench dated 30.12.2019. Further, in the present case, the goods imported are "used and second-hand machines". The Chartered Engineer has reported that the goods are used and second-hand. There is no dispute on the fact that the goods are used and second-hand machines.

14. The Tribunal in the case of *Trinity Exporters (supra)* had an occasion to analyse the issue as to whether ADD is leviable on import of used and

second-hand machines. The issue was answered in favour of the importer and against the Department.

15. Taking note of the fact that the respondent-company has gone into liquidation and also following the decision in the case of *Trinity Exporters (supra),* we find no merit in the appeal filed by the Department.

16. In the result, the appeal filed by the Department is dismissed. The cross objection filed by the respondent is disposed of accordingly.

(Dictated and pronounced in the open court)

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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

RKP