

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Customs Appeal No.42225 of 2014

(Arising out of Order-in-Appeal No. 1193/2014 dated 21.07.2014 passed by
Commissioner of Customs (Appeals), Chennai)

New Karunai Granites

..... Appellant

No.37 Kuzhipattur Village,
Padur Post, Rajiv Gandhi Road, Via Kelambakkam,
Kanchipuram District 603 103.

VERSUS

Commissioner of Customs, (Export)

.... Respondent

Custom House, 60, Rajaji Salai,
Chennai 600 001.

APPEARANCE :

Shri Hari Radhakrishnan, Advocate, for the Appellant
Shri R. Rajaraman, Authorised Representative for the Respondent

CORAM :

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

FINAL ORDER No.40619/2024

DATE OF HEARING : 04.06.2024
DATE OF DECISION : 04.06.2024

Per Ms. Sulekha Beevi. C.S

Brief facts are that the appellant filed bill of entry dated 9.12.2011, for clearance of imported goods declared as multi-colour granite block, valued at Rs.3,26,377/-. They claimed the benefit of Notification No.32/97- Cus dated 01.04.1997. The goods were rough granite blocks and require a license for import. The appellant did not have the license issued by the DGFT. Show cause notice was issued

proposing to deny the benefit of exemption. It was also seen that the appellant had not fulfilled the condition as per the Notification No.32/97- Cus dated 01.04.1997. The said notification imposed a condition that the importer has to get the items free of cost, whereas the appellant had purchased the imported goods from the supplier abroad which was in contravention of the condition stipulated in the notification. Show cause notice was issued proposing to deny the benefit of notification and to confiscate the goods under Section 111 (m), 111(o) and 111(d) of the Customs Act, 1962 in respect of this bill of entry. Further, it was found that the appellant had earlier imported similar goods by bill of entry dated 8.4.2011, availing the benefit of the above said notification. The show cause notice proposed to deny the benefit of notification for the said imports also and proposed to confiscate the goods as per the provisions of Customs Act, 1962.

2. After due process of law, the original authority allowed the benefit of Notification No.32/97 for bill of entry dated 9.12.2011 and dropped the proposal for confiscation of goods on the ground that the appellant had produced necessary license subsequently. As per this order, the original authority, imposed a penalty of Rs.25,000 under section 112 (a) of the Customs Act, 1962. The appellant paid the penalty. Against this order passed by the original authority, the department filed appeal before the Commissioner (Appeals), raising the ground that the appellant is not eligible for the benefit of notification no.32/97.

3. The Commissioner (Appeals), vide order impugned herein, allowed the appeal filed by the Department holding that the appellant is not eligible for benefit of Notification No. 32/97 and remanded the matter to the original authority to take steps for recovery of duty with regard to the import of goods on both bills of entry. The Commissioner (Appeals) also held that the goods are liable for confiscation in regard to the earlier bill of entry dated 08.04.2011, and that penalties are also to be imposed by the original authority for the reasons that there was no licence for the earlier import. Against such order of Commissioner (Appeals), the appellant is now before the Tribunal.

4. The Ld. Counsel Shri Hari Radhakrishnan appeared and argued for the appellant. The Ld. Counsel fairly conceded that appellant is not eligible for the benefit of the Notification No.32/97-Cus dated 01.04.1997. The notification stipulated that the goods imported should be free of cost. The appellant had not imported the raw materials free of cost and therefore they are not eligible for the benefit of the Notification. However, as the goods on which job works were done after import have already been exported, the demand of duty cannot sustain. The directions issued by the Commissioner (Appeals) that the original authority has to take steps for recovery of duty on imports made on both Bills of Entry is erroneous and prayed to set aside the same.

5. The Commissioner (Appeals) has observed that the goods are liable for confiscation. It is submitted that, the order directing confiscation of the goods also cannot sustain for the reason that the goods have already exported and are not available for confiscation.

The decision in the case of Sankar Pandi Vs. Union of India - 2002(141) ELT 635 (Mad) was relied to argue that where the goods are not available, confiscation or redemption fine and penalties cannot be imposed. The Ld. Counsel submitted that at the time of subsequent import dated 9.12.2011, the appellant obtained license for import of raw granite from the DGFT. It is prayed that the appeal may be allowed.

6. Ld. AR Shri R Rajaraman appeared for the department. The findings in the impugned order was reiterated. It is strongly argued by the Ld. AR that the appellant is not eligible for Notification No.32/97 as they have not imported the raw granites free of cost. The appellant, having violated the conditions of the Notification, is liable to pay duty. It is submitted that the order passed by the Commissioner (Appeals) directing to recover the duty from the appellant is therefore legal and proper. With regard to the observations of the Commissioner (Appeals) that the goods are liable for confiscation, the Ld. AR submitted that the appellant had mis-declared the goods as 'coloured granites'. Only on the examination by the officers, it was noted that the goods are 'rough granites'. Thereafter appellant put forward the claim of Notification No.32/97. Later, the claim as per this notification also was held to be not admissible. The appellant, having misdeclared the goods, the order for confiscation of the goods and direction to impose penalty, passed by the Commissioner (Appeals) is valid and proper. It is prayed that the appeal may be dismissed.

7. Heard both sides.

8. The issue to be decided in the present case is whether the remand order passed by the Commissioner (Appeals) directing the adjudicating authority to recover the duty in respect of the goods imported vide two Bills of Entry dated 08.04.2011 and 09.12.2011 is legal and proper and also whether the observations made by the Commissioner (Appeals) that goods are liable for confiscation can sustain or not.

9. On hearing the submissions and perusal of records, we find that the goods imported by the Appellant have been exported after completion of job work. The appellant imported rough granite and converted them into monuments or flower vases etc. The Commissioner (Appeals) in page 5 of the impugned order has observed that the appellant has informed that the goods have already been exported. The appellant had submitted before Commissioner (Appeals) that the exports can be correlated with the Bills of Entry and that the same can be verified by the department.

10. The Ld. Counsel furnished before us the shipping bills to show that the export correlate with the (bills of entry) of import done by the appellant. It is clear that goods which were imported have subjected to job work and exported. The Ld. Counsel has admitted that appellant is not eligible for Notification No.32/97. Even though appellant is not eligible for the notification, the duty demand cannot sustain as the goods have already been exported. We therefore find that the direction of the Commissioner (Appeals) to demand duty on import cannot sustain and requires to be set aside. Ordered accordingly.

11. The second issue is with regard to the direction to order, confiscation of the goods imported. As already stated, the goods after job work and have been exported. The goods are not available for confiscation and for this reason it is not legal and proper to order confiscation and impose redemption fine or penalty. The Hon'ble Supreme Court in the case of UOI Vs. Sankar Pandi (supra) has upheld the decision of the Jurisdictional Hon'ble High Court that when goods have been re-exported and are not available before the officer, the same cannot be confiscated. We are of the considered view that the order for confiscation passed by the Commissioner (Appeals) cannot sustain. However, we find that the original authority had imposed the penalty of Rs.25,000/- under Section 112(a) as the appellant did not possess the license for the import dated 08.04.2011. The appellant has not filed any appeal against the order. The order passed by the adjudicating authority having attained finality on the issue of this penalty imposed, we are of the view that the said penalty requires to be sustained.

12. We therefore set aside the impugned order and restore the order passed by the original authority dated 01.02.2013. The appeal is allowed in above terms with consequential relief, if any.

(Order dictated and pronounced in the open court)

(VASA SESHAGIRI RAO)
Member (Technical)

(SULEKHA BEEVI. C.S)
Member (Judicial)