IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. I

Appeal No. E/1017, 1009/2004-EX[DB]

[Arising out of Order-in-Appeal No. 111/2003 dated 04.12.2003, passed by the Commissioner of Central Excise, New Delhi]

Krystal Stone Exports Ltd.
B.D. Agarwal **...Appellants**

Vs.

C.C.E. & S.T.-Jaipur-I **....Respondent**

Appearance:

Sh. Kunal Sabharwal, Advocate for the Appellant
Sh. H.C. Saini, DR for the Respondent

CORAM:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Date of Hearing: 03.02.2017
Date of Pronouncement: 15.02.2017

FINAL ORDER NO. 50873-50874 /2017-Ex(DB)

Per Ashok K. Arya:

The appellant namely M/s Krystal Stone Exports Ltd. and Shri B.D. Agarwal are in appeal against Order-in-Original No. 111/2003 dated 27.02.2003 passed by Commissioner Central Excise, Jaipur. The impugned Order-in-Original inter alia confirms the demand of Custom Duty amounting to Rs 48,02,438/- along with interest. The impugned order also confirms the Central Excise duty of Rs 14,53,970/- and imposes penalty equivalent to Central Excise duty confirmed against the appellant assessee, M/s Krystal Stone Export Ltd. The impugned order further imposes a penalty of Rs 25,00,000 under Rule 26 Section 102 of Customs Act on the assessee appellant and the penalty of Rs 2,00,000/- on the appellant, Shri B.D. Agarwal, Director in the assessee unit. The impugned order also confiscates the imported goods namely **Multi Blade Frame Saw Machine** under Section 111(o) of the Customs Act, 1962 and gives option of redemption on payment of fine of Rs 20,00,000/- under Section 125 (1) of the Customs Act, 1962.

2. The appellants have been represented by Ld. Advocate, Shri Kunal Sabharwal and the Revenue has been represented by Ld. AR, Shri H.C. Saini.

3. The ld. Advocate for the appellants based on the appeal Memoranda and written submissions inter alia mainly submits as under:

i. The Show Cause Notice (SCN) and impugned order dated 04.12.2003 have been issued without sanction of the Development Commissioner. The Board Circular No. 21/95, dated 10-3-95 is relied on.

ii. The appellant being 100% EOU was under physical control of the Department and it duly paid the charges for the salary of One Sepoy and One Inspector regularly since its inception. The Anti Evasion team raided the premises of the Appellant at 6 PM in the evening of 19.09.2001 and carried out the said raid for three (3) hours by the evasion team and during the raid there was no electricity in the premises; the case made by eye estimation without taking physical measurement.

iii. Except in the case of polished Marbles Tiles, the shortage was very nominal and given the fact that while cutting stone Tiles, the wastage nearly 30-40% is the usual course, the Department completely erred in noting such shortage in Physical stock over the stock as entered in the books to be a clandestine removal.

iv. This shortage additionally is due to the samples which are sent to the buyers and therefore the same can in no manner be a clandestine removal.

v. The Frame Saw Machine imported by the appellant was duly installed but the same could not be put to use due to non-supply of supplementing machine by the foreign supplier on account of dispute of the Appellant with its bankers in India. Therefore, the failure of the appellant to operate the Frame Saw Machine within a period of one year was neither intentional nor deliberate and was solely due to the reason that the supplementary machines were not imported due to lackadaisical and callousness of the bank.

vi. In terms of Customs Notification No. 53/97 dated 03.06.1997 read with Section 61 of the Customs Act, in case an importer fails to install the machine within a period of one year from the date of import, then such person shall have to seek extension of the time for installation of the same from the Commissioner Customs.

vii. The Managing Director of the appellant filed an application with the office of Commissioner of Customs for seeking extension for setting the frame saw machine into operation.

viii. The impugned order dated 04.12.2003 has been deliberately passed behind the back of the Appellants. Further, immediately after providing the documents, the case was fixed for personal hearing in the month of July, 2003 and September, 2003. The

Appellant requested the respondent that since relied upon documents have been provided just few days back, they may be given adequate time and opportunity to prepare their case and proceed further.

4. The ld. AR for the Revenue reiterates the findings given in the impugned order.

5. After careful consideration of the facts on record and submission of both the sides, it appears that the appellants have not been complying with the provisions of law all along as the machinery imported namely Multi Blade Frame Saw (MBFS) for marble was not put in operation within one year of its import, which is the requirement as per the Notification no. 53/1997-Cus dated 03.06.1997. The appellants argue that they could not put into operation as the supplementary machines were not imported due to differences with the bank cannot exonerate them of their responsibility as they did not get extension of time period from the Customs for putting the machine into operation within prescribed time.

5.1 In respect of shortage of goods, the appellants state that shortage is nominal and it is also because of the samples sent to their buyers. However, there is no evidence produced by the appellant either before the Adjudicating authority or before the Tribunal to substantie their said argument.

5.2 The appellants state that the impugned order has been issued behind their back without giving any opportunity to prepare and present their case. However, the impugned order mentions that they were given opportunity of personal hearing on 1.05.2003, 2.07.2003, 28/31.07.2003, 2.09.2003 and 23.9.2003 but they did not make use of this opportunity of personal hearing nor did they file the reply of the Show Cause Notice, and instead a request for further adjournment was made. The Adjudicating authority passed the order saying that there was no other option than to proceed on the facts and circumstances on record.

6. In the light of above discussions, we are of the considered view that the impugned order has rightly been passed against the appellants and there is no reason to interfere with the said order. Consequently, both the appeals are hereby dismissed and the impugned order sustained.

[Pronounced in the Open Court on _15.2.2017______]

(Justice Dr. Satish Chandra)
President

(Ashok K. Arya)
Member (Technical)

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