IN THE CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:28.07.2017

Customs Appeal No.52988/2015 (DB)

(Arising out of Order-in-Appeal No.42(SLM)/Cus/JPR/2015 dated 15.05.2015 passed by the Commissioner, Central Excise (Appeals), Jaipur)

CC, Jodhpur ….Appellants

Vs.

Mayur Uniquoters Ltd. …Respondent

Present for the Appellant : Shri Govind Dixit, DR
Present for the Respondent: Shri Pramod Kumar Rai, Advocate

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)

FINAL ORDER NO.55639/2017

PER B. Ravichandran:

Revenue is in appeal against order dated 15.05.2015 of Commissioner (Appeals), Jaipur. The respondent imported consignments of PVC Resin Paste Grade falling under Customs Tariff Heading 3904211. The four consignments imported between July to September, 2012 were assessed provisionally. Notification No.70/2010-Cus dated 25.06.2010, as amended by notification no.8/2012-Customs dated 16.01.2012, imposed AD duty on PVC Resins falling under the said Tariff Heading. The CESTAT, while deciding the appeal against imposition of AD duty on PVC resin, vide final order dated 6.7.2012, set aside these two notifications and remanded the matter back to the Designated Authority for a decision, afresh. It was also directed that AD duty as applicable on the date preceding the issue of Notification No.70/2010-Cus shall continue to be levied on provisional basis for a period of six months. Later, on completion of de novo proceedings by the DA, notification no.15/2013-Cus dated 3.7.2013 was issued to continue the AD duty imposed earlier.

2. The dispute in the present case is that the Revenue demanded AD duty in terms of notification no.15/2013-Cus, for the provisionally assessed and cleared consignments of the respondent during July to September, 2012. The Original Authority as well as first Appellate Authority held that for the said imports, the AD duty imposed under notification no.15/2013 cannot be made applicable. Even in terms of the final order of the Tribunal regarding continuation of provisional AD duty, no duty liability will arise in these case of imports, as the declared value is within the limits.

3. The Revenue contested the findings of the lower authorities on the ground that the Tribunal, while setting aside the Notification no.70/10-Cus, as amended, directed the continuation of AD duty applicable on the date preceding the said notification. When the Government finalized the imposition of AD duty afresh vide notification no.15/13-Cus, the same should be considered in continuation of notification no.70/2010-Cus. Notification No.15/13 has been issued within the validity period of Notification No.70/10 and as such, the continuing AD, as notified finally vide notification no.15/2013, should be applicable to the goods imported and provisionally assessed, in respect of the respondent.

4. We have heard both the sides and perused the appeal records.

5. First of all, we note that the only ground, on which the present appeal is filed, is without any legal basis. Notification No.70/2010-Cus was set aside by the Tribunal. There is no question of effective or valid period for the said notification. Even otherwise, the provisional duty ordered to be continued for six months by the Tribunal is as per the rate applicable on the date preceding the notification

no.70/2010 Cus. We note that the notification no.15/2013-Cus is not legally made retrospective and it cannot revive notification no.70/2010-Cus, which has been set aside. The operative portion of the notification is clear and there is no ambiguity at all. In any case, the treatment of provisional duty has been elaborated under Rule 21 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped and Articles and for Determination of Injury) Rules, 1995. The said rule clearly stipulates that if the AD imposed on the basis of the final findings of the investigation conducted by the DA is higher than the provisional duty already imposed and collected, the differential shall not be collected from the importer. Further, Rule 23 read with Rule 20 of these Rules make it clear that the AD duty levied shall take effect from the date of its publication in the official gazette. We note that the difference between the provisional duty under AD and provisional assessment for regular Customs duty has not been appreciated by the Revenue while preferring this appeal. The finalization of provisional assessment for AD duty is to be in terms of Rule 21, stated above.

6. In view of the above discussions and analysis, we find no merit in the present appeal by the Revenue. Accordingly, the same is dismissed.

[Operative part of the order already pronounced in open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.