IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –II

Customs Appeal No.C/51348 & 51349/2017-CU [DB]

[Arising out of Order-in-Appeal No. CC(A)CUS/D-II/ICD/PPG/332 to 333/2017 dated 18.05.2017 passed by the Commissioner (Appeals), Customs, New Delhi]

M/s.Saboo Components & Relays LLP
Vishwanath Saboo …Appellants

Vs.

C.C., Patparganj, Delhi … Respondent

Present for the Appellant : Mr.Mohan Lal, Advocate
Mr. Vaibhav Singh, Advocate
Present for the Respondent: Mr.R.K. Maji, D.R.

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

Date of Hearing / Decision : 21/09/2017

FINAL ORDER NO. 57030-57031/2017

PER: B.RAVICHANDRAN

The appellants are against Order dated 18.05.2017 of Commissioner (Appeals), Airport, New Delhi. The appellants imported relays and filed Bill of Entry for clearing the same.

Certain dispute regarding correct classification and correct description of the products and availability of concessional rate to the said products were examined by the Officers of DRI. Proceedings were initiated against the importer – appellant alleging mis-declaration of goods and wrongful claim of exemption in consequence of such mis-declaration. The case was adjudicated by the original authority vide order dated 17.10.2015. He held that goods were mis-declared and consequently, he ordered confiscation of the goods valued at Rs.1.02 Crores which were already cleared and permitted for redemption on payment of fine of Rs.20,50,000/-. He also ordered confiscation of the goods, which are in detention, valued at Rs.11,31,534/- with permission to redeem on payment of Rs.3,00,000/- A differential duty of Rs.8,79,922/- was confirmed alongwith penalty of equivalent amount under Section 114AA of the Customs Act, 1962. A further penalty of Rs.5,00,000/- was imposed on Viswanath Saboo, Partner / Director of the importing firm, under Section 114A and 114 AA of the Act.

2. The ld. Counsel appearing for both the appellants submits on the following lines:-

(a) Confiscation of goods valued at Rs.1.02 Crores is not legally tenable as the said goods were neither detained nor seized and released on a bond and hence, the question of confiscating them and ordering release of them on fine is without legal basis.

(b) Regarding differential duty, interest and penalty, it is submitted that the differential duty alongwith interest has already been paid during the course of investigation and subsequent to passage of Finance Bill, 2015, they have also deposited 15% of the disputed amount towards penalty in terms of Section 28 (5) of the Customs Act, 1962 - Explanation -3. The lower authorities did not allow the reduced penalty for closure of the case on the ground that such reduced penalty has not been paid within 30 days of passage of the Finance Bill 2015 into Act. It is submitted that the 30 days period will conclude on 13.06.2015, which was a second Saturday. Since the Customs operations were closed in the port of import, they made the payment on the next working day, namely, 15.06.2015. Accordingly, the case should have been closed.

(c) There is no justification to impose separate penalty on the second appellant Shri Vishwanath Saboo as the penalty has been imposed on the importing firm in which the second appellant is a partner.

3. The ld. AR supported the findings of the Commissioner (Appeals). He submitted that the appellants always have the

option to pay whatever amount due in their case any time through online payment. As such, he pleaded that there was no customs operations in the importing port on 13.06.2015 being second Saturday, is not acceptable. As such, he submitted the provisions of General clauses Act to determine the last date shall not have any relevance in this case. He also further stated that the Banks will accept payment on that day. Non compliance of 30 days time limit has been elaborated in the impugned order. As such, he supported the findings of the Commissioner (Appeals).

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

5. On the first issue regarding the legal tenability of confiscation of goods, which are neither detained nor seized by the customs authorities, we hold that there is no legal support to confiscate the goods, which were neither detained nor seized and thereafter released with a conditional bond. As such, the question of confiscating the goods, which are neither in custody nor bound to be presented as per the bond, is not legally sustainable. Accordingly, the confiscation of goods worth Rs.1,02,59,039/-, which were already assessed and cleared without any condition, is not sustainable.

6. On the issue of application of Section 28 (5) as per the new amendment carried out in Finance Act, 2015, we note, the whole dispute is based on the compliance of payment of 15% within 30 days of enactment of the Finance Bill 2015. The impugned order discussed at length, (though the dates are wrongly mentioned) the claim of the appellant for closure of the case. We note, the appellant paid the 15% penalty on 15.06.2015 (Monday) the last date as per the 30 days time period given, is 13.06.2015. Though the customs online operations are available all the time and duty payment is also possible online, in the present case the amount to be paid is a penalty under the Misc. Heading and requires challan endorsement from the Customs Officer. Admittedly, in the port of import now under consideration the customs operations are not available on 13.06.2015 being second Saturday. As such, the possibility of getting endorsement and paying the penalty of 15% on 13.06.2015 was not available to the appellant. Considering such factual position and applying the provisions of Section 9 & 10 of General Clauses Act, 1897, we find that the compliance is to be taken as in time. Accordingly, in terms of Sub-Section (6) of Section 28 the proceedings against all the parties involved in the case shall conclude on payment of full differential duty with applicable interest along-with 15% of penalty.

7. Accordingly, in view of the above discussion and analysis, we find the impugned order is not sustainable as far as upholding the confiscation of goods, which were already assessed and cleared and also relating to non-closure of case in terms of Section 28 (6). The same is set aside . The appeals are allowed.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN) **MEMBER (TECHNICAL)**	**(S.K. MOHANTY)** **MEMBER (JUDICIAL)**

Anita