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

Date of Hearing:28.09.2017
Date of Decision: 10.10.2017

Customs Appeals Nos.50567-50568/2017

(Arising out of Order-in-Original No.15/2016 dated 5.1.2017 passed by the Commissioner of Customs and Central Excise, Jaipur)

M/s.Minakshi Exports — Appellants
Kailash Chand Agarwal

Vs.

CC, Jodhpur — Respondent

Appearance:

Rep. by Shri Sameer Jain & Shri S.P. Rao, Advocate for the appellant.
Rep. by Shri A.K. Singh and Shri P. Juneja, ARs for the respondent

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Orders Nos.57100-57101/2017

Per B. Ravichandran:

Both the appeals are against common impugned order dated 05.01.2017 of Commissioner of Customs (Preventive), Jodhpur. The main appeal is by M/s.Meenaskhi Exports and the second appeal is by Shri Kailash Chand Agarwal, Authorized signatory of the main appellant. The main appellant imported CFL and filed a bill of entry for clearance of the same through ICD, Jaipur. The appellant claimed concession in customs duty in terms of the Notification No.26/2000-Cus dated 1.3.2000 read with notification no.19/2000 dated 1.3.2000. The concession is available for goods of Sri Lankan origin. The appellants filed the prescribed certificate of origin in terms of India-Srilanka Free Trade Agreement (ISFTA). The said certificates were issued by the designated competent authority in Sri Lanka.

The Revenue entertained a doubt as to the correctness of the claim for concessional rate of duty for the impugned goods. It was viewed that the goods were manufactured in China and imported through Sri Lanka to India. When the goods were detained for further inquiry, the appellant moved the Hon'ble Rajasthan High Court by filing a writ petition, praying among other things for release of the goods. The High Court ordered for provisional release of goods on payment of customs duty and on furnishing 20% of value of the goods as bank guarantee. The Revenue filed further appeal against the High Court's order. The Hon'ble Supreme Court vide their order dated 7.5.2015 observed that since the show cause notice dated 22.07.2008 has already been issued by the Customs Authorities, the matter can be decided by the Adjudicating Authority after hearing the appellant.

2. The show cause notice was adjudged resulting in the impugned order. The Original Authority held that the country of origin certificates could not be accepted as the same have been obtained by filing incorrect declaration with the Sri Lankan Authorities. It was held that tube with plastic cover was shown as classified under CTH 7011.10 whereas the same was verified and reported by Sri Lanken Customs as classifiable under CTH 8539. As such, the Original Authority held that country of origin certificates were obtained on the basis of wrong information submitted by Shri Lankan supplier to the concerned authority.

3. The Original Authority rejected the proposal in the show cause notice that the goods were of Chinese origin. It was observed that there is no evidence to show that the goods have been imported into Shri Lanka from China in CKD/SKD condition, meriting classification as CFL. Accordingly, the Original Authority

held that the AD duty as applicable to the impugned goods, if imported from China, is not liable to be charged in the present case. However, the Original Authority rejected the claim of the appellant for preferential treatment of customs duty under notification no.26/2000-Cus stating that the importer has not fulfilled the conditions specified under Customs Tariff (Determination of origin of goods under the Free Trade Agreement between the Democratic Socialistic Republic of Sri Lanka and the Republic of India) Rules, 2000.The Original Authority disallowed the concessional rate for the impugned goods and confirmed a duty liability of Rs.46,21,917/-. Demand for AD duty was dropped. The imported goods valued at Rs.2,02,85,701/- were ordered to be confiscated with option to redeem on payment of fine of Rs.30,00,000/- in terms of the bond executed at the time of provisional release. Penalty equivalent to the duty was imposed on the main appellant under Section 114 A with further penalty of Rs.15 lakhs on the second appellant under Section 112 (a) of the Customs Act, 1962.

4. Ld. Counsel appearing for the appellants strongly contested the findings recorded in the impugned order. He submitted mainly on the following lines:-

(a) Imports were covered by bonafide certificates of origin issued by the competent authority in Sri Lanka.

(b) Similar consignments were regularly cleared by Delhi Customs Authorities in November, 2004 extending the benefit of concessional duty.

(c) Article 51 of the Constitution mandates that the State shall endevour to foster respect for international law and treaty obligations. The concessional duty available to the goods originating in Shri Lanka is in terms of a bilateral agreement. If there is any dispute with reference to implementation of the said agreement, the same should be solved by the Joint Committee in consultation. The validity issued country of origin certificates cannot be rejected by the Customs Authorities in India. The provisions of Rule 7 of the Origin Rules have also been fulfilled in respect of the impugned consignments.

(d) Three bills of entry of the appellants were duty assessed for similar goods from the same exporter and have been cleared on earlier occasions by the Delhi Customs Authorities extending the same conession.

(e) The validity and genuineness of the country of origin certificates have again been emphasized by the Designated Authority of Shri Lankan Government vide their letter dated 4.8.2008.

(f) The Original Authority fell in error in not considering the scope of Rule 7 of Origin Rules in correct perspective. For the manufacture of CFL a large number of components are required. The said manufacturing process is irreversible. The classification of glass tubes in the same heading as that of impugned goods will itself not make any material difference as CFL was manufactured using both the imported and indigenous materials of various tariff headings, in Sri Lanka.

(g) The enhancement of value of the impugned goods is also without legal basis. The identical goods were duly cleared by the very same Customs Department after examination and assessment and there is no justification to resort to market inquiry for value of the impugned goods.

(h) The impugned order is not sustainable with reference to confiscation and penalties also. There is no mis-declaration warranting any penal action.

5. The ld. AR supported the findings of the Original Authority. He submitted that the scope of Rule 7 of Origin Rules 2000 has been examined by the Original Authority. The preferential treatment for the impugned goods was rightly denied by the Original Authority.

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

7. We note that the impugned goods were imported from Sri Lanka. Certificates of Origin issued by the competent Designated Authority in Sri Lanka have been filed for claiming preferential treatment for customs duty. The genuineness of the certificates is not in dispute. The certificates are valid and reiterated by the issuing authority even after specific queries were made by the Customs authorities in India. We also note that the similar consignments have been cleared by the Customs authorities extending the preferential rate of duty in similar set of facts. We have perused the impugned order. We note that there is a basic contradiction in the findings recorded. After careful examination of the available details, the Original Authority categorically held that the goods were not of Chinese origin and as such, anti-dumping duty cannot be levied on them, which is otherwise leviable if the goods are of Chinese origin. Having recorded thus, the Original Authority proceeded to hold that the appellant is not eligible for preferential rate though admittedly, the goods have originated from Sri Lanka. In other words, the goods were held to be of not Chinese origin and also not of Sri Lankan origin. In other words, we note that it is clear that the question of country of origin of the present goods is left hanging without a finding by the Original Authority. The goods were neither of Chinese origin nor of Sri Lankan origin. We note that the same is not a tenable position.

8. The Original Authority has apparently exceeded the jurisdiction in going into the aspects of possible classification of inputs used by the supplier in the manufacture of impugned goods in Sri Lanka. Holding that one of the input and the final product fall under the same four digit classification, it was concluded that the provisions of the Rule 7 have not been fulfilled. More specifically, reference was made by the Original Authority to condition (b) and (d) of the Rule 7. This is based on the certain reports received from Sri Lankan Customs. The Original Authority while conceding the point that the assessment made by Sri Lankan Customs at the time of import of non-originating goods from China cannot be put to question here in India, proceeded to consider certain reports given by Sri Lankan Customs with reference to classification of one of the non-originating inputs. The classification of such input is not in the domain of the assessing officer in India. No opinion or conclusion can be formed based on the assessment, if any, carried out by Sri Lankan Customs. Denial of concession even when valid certificates of origin were submitted (and reiterated) is not legally tenable.

9. In view of the above discussion and analysis, we note that the impugned order is not sustainable. The same is set aside. The appeals are allowed.

[Order pronounced on 10.10.2017]

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

Ckp.