CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Bench – DB
Court – I

Application No. C/CROSS/66/2009
IN
Appeal No. C/58/2009

(Arising out of Order-in-Appeal No.68/2008(V-II)CUS dated 20.10.2008, passed by Commissioner (Appeals), Customs & Central Excise-Visakhapatnam)

CC- Vijayawada **....Appellant(s)**

Vs.

Ruchi Infrastructure Ltd., **…..Respondent(s)**

Appearance
Sh. Mr. Ganeshwar (Superintendent), for the Appellant.
Sh. None for the Respondent.

Coram:
Hon'ble Mr. M. V. RAVINDRAN., MEMBER (JUDICIAL)
Hon'ble Mr. C J MATHEW, MEMBER (TECHNICAL)

Date of hearing: 21/02/2018
Date of decision: 21/02/2018

FINAL ORDER No. A/30537/2018

This appeal is filed by the revenue against Order-in-Appeal No.68/2008 (V-II) CUS dated 20.10.2008.

2. None appeared on behalf of the respondent despite notice. Since the appeal is of 2009 and lies narrow compass, the appeal is taken up for disposal and it is noticed a cross objection is filed by respondent.

3. By this order we disposing of appeal as well as the cross objection.

4. Heard Ld. Departmental representative and perused the records. On perusal of records it transpires that the issue is regarding assessment of Bill of Entries wherein differential duty of 3,39,375-/ is confirmed against respondent. Aggrieved such assessment, appeal was filed before the first appellate authority. The first appellate authority after following due process of law agreed with the contentions as raised by the respondent and set aside the demand of differential duty.

5. Ld. Departmental representative draws our attention to the Order-in-Appeal and submits that it is in error to hold that the goods which were imported were Crude Palm Olein and not Palm Oil as held by the Adjudicating Authority.

6. It is his submission that due to this reason, duty was charged at transaction value as declared, importer described the goods as Crude Palm Oil, cleared the consignment provisionally, classification was done by the department on receipt of test results from the chemical examiner as palm Oil; the assessment was done in terms of transaction value based upon the invoice quantity and the importer had informed the authorities that FOB price on the imported goods is for Others Crude Palm Olein which is evident from the fact that the importer have agreed and paid the duty in terms of provisional assessment. Classifying the goods as palmoil, After considering the contentions raised by the Ld. Departmental representative, and perusal of records we find that the first appellate authority while setting aside the final assessment of the Bills of Entry, has passed a detailed order which is reproduced:

"6. Rival contentions have had my careful examination. I have examined the order dated 25.04.2007 and I have no hesitation in holding that the order/letter benefit of all the ingredients of a valid speaking order. The order is void ab initive for this very reason. The reasons behind issue of such an order, bell understanding. The order quoted two CBEC circulars No. 85/2003 dated 24.09.2006 and also advocates and admits adopting of transaction value in respect of the clearance of 4749.925 MTs in terms of CBEC circular No 06/2006 dated 12.01.2006 irrespective of the quantity ascertained through ullage. I had gone though CBEC circular 85/2003-Cus carefully and notice that certain guidelines have been given therein for testing of import cargo in question and assessment thereof given therein for testing of import cargo in question and assessment thereof do not find any licence given therein, to the adjudicating / assessing authorities given a non speaking order even when the test results are against the claim the importers. For this reason, I find that the finalization of the said assessment in the said manner, is no way supported by the said CBEC circular. Furnishing cogent reasons for re-classifying the goods is elementary constituent of a speaking order and I am in no doubt to hold that, any speaking order without the said ingredient ***fails*** *as such. The other CBEC circular is circular No. 6/2006 cus 12.01.2006. For a better understanding, I will take the trouble reproducing para 4 of the said circular herein below:*

*Para 4. "The matter has been considered by the Board and it has been decided that, in all cases where customs duty is leviable on ad valorem based the assessment of bulk liquid cargo should be based on invoice price, which the price paid or payable for the imported goods, i.e. transaction value irrespective of quantity ascertained through shore tank measurement or a should be apportioned based on the quantity intended tob e discharged at the relevant ports****. However, wherever the customs duty is leviable at special rate****, the determination of quantity would be relevant for levy of customs duty in this* *regard, the contents of Para 7 of the Circular No. 96/2002, dated 27 December 2002 may be referred to only in respect of cases where the Custom duty is leviable at specific rate. All pending provisional assessment should finalized accordingly.*

7. I, for argument sake, am prepared, to set aside the fact that CBEC circulars are binding only on the departmental officers and not on the trade fairly settled position and proceed further in the examination of the issue.

Decide on the applicability of Notification CBEC circular 6/2006 dated 12.01.2006 would first get down to examine whether Customs duty in the instance case leviable at a specific rate. For this, examination of the notification No. 36/2006 Cus (N.T) dated 03.08.2001, which is reproduced below herein for easy reference necessary.

7.1 Notification 36/2001-Cus(N.T) dated 03.08.2001. (does incorporate the amendments made from time to time, as the same is reproduced only for highlighting the systems of assessment in respect of goods in question)

"In exercise of the powers conferred by sub-section (2) of section 14 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary and expedient so to do, hereby being satisfied that it is necessary and expedient so to do, hereby fixes the tariff values specified in column (4) of the Table below, in respect of the imported goods of the description specified in the corresponding entry in column (3) of the said Table and falling under Chapter or heading or sub-heading No. of the first Schedule to the Customs Tariff Act, 1975 (51 of 1975), as is specified in the corresponding entry in column (2) of the said Table, having regard to the trend of the value of such or like goods.

S.No.	*Chapter of Heading No. or sub-heading No.*	*Description of goods*	*Tariff value (US $ per metric tonne)*

(1)	*(2)*	*(3)*	*(4)*
1	*1511*	*Crude Palm Oil*	*337*
2	*1511*	*RBD Palm Oil*	*351*
3	*1511*	*RBD Palmolein*	*372*

8. From the above, I am of the opinion that it would require no great expertise, to realize that, the payment of duty on crude palm oil is ***effectively levied at a specific rate (albeit indirectly in as much as duty is not specific whereas by specifying value duty is automatically rendered specific)*** *and not on advalorem basis, in as much as, the levy of duty in respect of the said goods is based on the tariff values fixed by the Board from time to time, in exercise of the powers conferred by subsection (1) of Section 14 of the Customs Act, 1962. Thus irrespective of the transaction value of the goods in question, the goods will always be assessed on a specific value in force at the material time and such a system of assessment can never be construed as advalorem system of assessment and can instead be only considered as levy of duty at specific rates. For the same reason, I find that the said CBEC circular No. 6/2006-Cus dated 12.01.2006 is not at all relevant to the present case, in the sense contended by the revenue and I find that the reliance placed by the Assistant Commissioner on the said circular vitiates his order of finalization, absolutely.*

9. Moreover, I find that the circumstances of the instant case necessitate recourse to Section 23 of the Customs Act, 1962, which I feel, renders the importer eligible for remission of duty in respect of the 21.773 MTs of oil, received short by them, in as much as, I find that title to the said goods had been duly relinquished by the appellants. I also find that there is no dispute regarding the fact of short receipt of the said goods between both the parties. Hence I find that the practice adopted by the Assistant Commissioner in finalization of the assessments in question, that of considering the total value of *the 4749.925MTs of Crude Palm Oil for the purpose of calculation of due payable, lacks the sanction of law."*

It can be seen from the above reproduced findings of the first appellate authority, that the entire issue was considered holistically and also applied the law as has been settled by the higher courts in the case of the quantum of quantity that needs to be assessed. We find that in the grounds of appeal, revenue authorities are seeking to re-classify the products which could not be done so without issuance the Show Cause Notice, is correctly recorded by the first appellate authority.

7. In view of the foregoing, we hold that the impugned order is correct and legal and does not require any interference. The appeal of the revenue is rejected and the cross objection filed by the respondent being in support the Order-in-Appeal also stands disposed of.

(Operative part of this order was pronounced in court
on conclusion of hearing)

C J MATHEW
MEMBER (TECHNICAL)

(M. V. RAVINDRAN)
MEMBER(JUDICIAL)

Swapna….