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

Appeal No. C/1607/2010

(Arising out of Order-in-Appeal No. 42/2010 (H-II) Cus dated 06.07.2010 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-II), Hyderabad)

M/s Suven Engineering Enterprises .....Appellant(s)

Vs.

Commissioner of Customs,
Hyderabad -II .....Respondent(s)

Appearance
Shri Y. Sreenivasa Reddy, Advocate for the Appellant.
Shri Anwar, Assistant Commissioner (AR) for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)
Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 05/10/2018
Date of Decision: 05/10/2018

FINAL ORDER No. A/31357/2018

[Order per: P. Venkata Subba Rao]

This appeal is filed against Order-in-Appeal No. 42/2010 (H-II) Cus dated 06.07.2010.

2. The appellant herein is an importer of Polished Marble Slabs imported from Sri Lanka and has filed a bill of entry. On investigation, the Customs Authorities found that the goods which

were imported tallied with the description given in the bill of entry. However, it was found that the goods in question are polished marble slabs classifiable under Custom Tariff Heading 6802. Polished marble slabs can be freely imported as per the EXIM policy if the value is not less than US $ 50 per Sq.M. The appellant declared a value of US$ 26 per sq. m. Order-in-Original No. 46/2010-Cus dated 02.06.2010 was passed by the Additional Commissioner of Customs after taking into account the written submissions and submissions during personal hearing of the importer holding that polished marble slabs falling under CTH 68022190 can be imported under DGFT Notification No. 18/2008 dated 30.06.2008 provided the CIF value of goods is US dollars 50 per square metre and above. If the value is less than US dollars 50 per square metre, import is not free and the importer would require a DGFT licence to import a polished marble slabs. Accordingly, import was done in violation of foreign trade policy framed under the Foreign Trade (D & R) Act. Therefore, the goods were held liable for confiscation under Section 111(d) of the Customs Act, 1962 for import in violation of the prohibition under FT(D& R) Act. He, therefore, ordered confiscation of the imported goods and allowed the redemption on payment of fine of Rs. 2 lakhs under Section 125 of the Customs Act. He also imposed a penalty of Rs. 1 lakh on the importer under Section 112(a) of the Customs Act. The redetermination of value by the Additional Commissioner did not result in any demand of differential duty, presumably, because the goods were imported from Sri Lanka, being a SAARC country were fully exempted. Aggrieved by the Order-in-Original, the appellant filed an appeal before the First

Appellate Authority who vide the impugned order dismissed the appeal and upheld the order of the lower authority.

3. The Learned Counsel for the appellant submits that during the relevant period there were two DGFT notifications and a Public Notice which covered the product in question which allowed free import. Notification No. 18/2008 dated 30.06.2008 of DGFT allowed the import of marble slabs if the CIF value of goods is US dollars 50 and above per square metre. DGFT also issued another Notification No. 57/2008 dated 12.11.2008 stating that in case of import of the product from Nepal, the exemption under 18/2008 is applicable without the price restriction. The Learned Counsel submits that in terms of this notification their products would not have been freely importable. However, DGFT had issued another Public Notice No. 25 (RE-98)/97-2002 dated 01.08.1998 which allowed free import of a large number of products including the marble slabs if the imports are from the SAARC countries. Since, the appellants imported the marble slabs from Sri Lanka, a SAARC country, the same is freely importable in terms of the public notice No. 25(RE-98)/97-2002. He further submits that they sought clarification from DGFT who clarified in writing that the public notice allowing free import of various commodities from the SAARC countries still valid. It is his further submission that in terms of FT(D&R) Act, any clarifications regarding EXIM policy given by the DGFT will be final. He further submits that the public notice under which the marble slabs are freely importable from the SAARC countries covers their imports and therefore they have not violated any condition of the policy for importing goods.

Therefore, Section 111(d) does not apply and the confiscation and penalties under Section 112(a) need to be set aside.

4. Learned Departmental Representative reiterates the impugned order.

5. We have considered the arguments on both sides and perused the records. The short point to be decided is whether the marble slabs imported by the appellant declaring a value of less than US dollars 50 per square metre are importable freely as per the foreign trade policy or not. Consequently, whether these goods are liable for confiscation and the fine and penalty are applicable to this case. It is evident that there are two notifications issued by the DGFT, one notification is allowing import of the product in question from anywhere provided the value is more than US dollars 50 per square metre. Another notification which allows free import of various goods including the goods in question if they are imported from SAARC countries (including Sri Lanka). The Order-in-Original and the order of the First Appellate Authority are passed on the presumption since there is a commodity specific notification with a restriction on value for import, the goods are not freely importable. In the impugned order the First Appellate Authority held that "in effect, w.e.f 12.11.2008 import of marbles is free provided CIF value is US dollars 50 and above per square metre, in respect of all imports from all countries except Nepal. In these circumstances, the contention of the appellants that the import of marbles from SAARC countries conditions to be free in terms of DGFT public notice No. 25 (RE-98)/97-2002 dated

01.08.1998 is without merits". We find that the Commissioner (Appeals) has thus dismissed the public notice issued by the DGFT without assigning any reasons. The Commissioner (Appeals) being a quasi judicial Authority cannot dismiss any notification issued by the DGFT. Whenever, more than one notification is available, to an importer, it is for the importer to choose which notification he would like to operate in provided if he meets the necessary conditions for that notification. In this case, the appellant is evidently eligible for the Public Notice permitting free import of goods from the SAARC countries and this has been wrongly denied by the First Appellate Authority. In conclusion, we find that the marbles imported by the appellants are freely importable as they have been imported from Sri Lanka and the impugned order is liable to be set aside and we do so.

6. The appeal is allowed and the impugned order is set aside.

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

P. VENKATA SUBBA RAO	**M.V. RAVINDRAN**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Lakshmi....