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

Appeal No. C/2154/2010
(Arising out of Order-in-Appeal No.43/2010 (H-II) CUS dated 13.07.2010 passed by CCCE & ST (Appeals-II), Hyderabad)

Sudershan Biotech Ltd ….. Appellant(s)

Vs.

CC, Hyderabad - Customs ….. Respondent(s)

Appearance
Shri M.V.S. Sridhar, Advocate for the Appellant.
Shri Moin Anwar, Asst. Commissioner/AR for the Respondent.

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 14.11.2018
Date of Decision: 14.11.2018

FINAL ORDER No. A/31152/2018

[Order per: M.V. Ravindran]

1. This appeal is directed against Order-in-Appeal No. 43/2010 (H-II) CUS dated 13.07.2010.

2. Heard both sides and perused the records.

3. The issue in this case is regarding the demand of customs duty from the appellant with interest and imposition of penalty on the ground that they had not produced installation certificate.

4. The appellant herein imported Super Speed Refrigerated Centrifuge and Protein Purification Setup by Bill of Entry No.130601 dated 21.11.2005 and Bill of Entry No.137894 dated 30.01.2006 respectively for Research and Development purposes, claiming benefit of Notification No.21/2002-CUS

dated 01.03.2002 as indicated in S.No.248 (b) and Condition No.53 of the table to notification. It is the case of the revenue that appellant had not produced certificate from jurisdictional Asst. Commissioner of Central Excise or Dy. Commissioner of Central Excise, as the case may be as to that the goods which were imported are installed in their Research and Development Wing.

5. It is undisputed that appellant imported the Centrifuge and Purification Setup for Research and Development purposes and has installed the same in the premises. We find that the Condition No.53 (i) reads as under:

> *"Condition No.53 (i)*
> *(a) If the goods are imported for Research and Development purposes*
> *(b) If the imported goods are installed in the said Research and Development Wing of the importer within six months from the date of importation and certificate from the jurisdictional Asst. Commissioner of Central Excise or the Dy. Commissioner of Central Excise, as the case may be, is produced before the Asst. Commissioner of Customs or the Dy. Commissioner of Customs, as the case may be, at the port of importation and*
> *(c) If the goods imported are not transferred or sold for a period of seven years from the date of installation"*

6. It can be seen from the above reproduced condition that appellant is required to install the imported machinery for Research and Development purposes within six months from the date of importation. The only finding of the adjudicating authority is, appellant has not done so. On perusal of Page No.41 of appeal memoranda, we find that office of the Superintendent of Central Excise having jurisdiction over appellant's factory/ Research and Development Wing, by a letter dated 23.10.2007 had intimated the jurisdictional Asst. Commissioner, clearly stating that both the imported goods were installed on 28.11.2005 and 06.02.2006, that this inspection was undertaken as directed by the office of the Asst. Commissioner of Central Excise having jurisdiction over the unit. There is a categorical observation of Range Officer intimating the jurisdictional Asst. Commissioner, that the imported goods were installed within six months from the date of

importation, we find that the conditions which were required to be followed by the appellant for claiming the benefit of S.No.248 (b) of Notification No. 21/2002-CUS as amended has been adhered to, and there is no reason for confirmation of the demand of duty by the lower authority. Thus, our view is fortified by the decision of the Tribunal in the case of Kanchi Karpooram Ltd Vs CC, Chennai [2007 (211) ELT 587] and Mazagon Dock Ltd [2006 (202) ELT 706].

7. In view of the foregoing and in the facts and circumstances of this case, we find that the impugned order is unsustainable and liable to be set aside and we do so.

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

(Operative Part of this order was pronounced in the Open Court
On conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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