IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL KOLKATA
EAST ZONAL BENCH, KOLKATA

Date of Hearing/Decision: 18.5.2018

Appeal No. CA/ 524/560/2009

(Arising out of Order-in-Original No.KOL/CUS/PORT/44/2009 dated: 19/3/2009 passed by the Commissioner of Customs,(Port) Kolkata)

THE COMMISSIONER OF CUSTOMS (PORT) KOLKATA Appellant
U.T. LTD

Vs.

M/s U.T. Ltd. Kolkata Respondent
C.C. (Port).Kolkata

Appearance

None for the appellant

Sh. S.K.Naskar,AC(DR) for the respondent

CORAM:**Hon'ble Mr. P.K. Choudhary, Member (Judicial)**
Hon'ble Mr. Bijay Kumar, Member (Technical)

Final Order No.F/76419-76420/2018

Per: Bijay Kumar

The present appeal arises out of the Order-in-Original No. KOL/CUS/PORT/44/2009 dated 19/3/2009 passed by the Commissioner of Customs,(Port) Kolkata.

2. In this case both the Revenue as well as the assessee has filed the appeal against the impugned Order-in-Original. The Revenue's Appeal is numbered No. CUS/APP 560/09 and that of the assessee's Appeal No as CUS/APP 524-09. The Revenue is in appeal against the impugned order for non-imposition of penalty

under Section 112 of Customs Act on the importer and their CHA, while the importer is in appeal against the Portion of the order confirmed against them by imposition of penalty of Rs. 2,34000/- under Section 125 of Customs Act for the confiscated good under Section 111(d) of the Customs Act,1962.

3. The issue involved in this case is regarding the application of restriction imposed by Notification No. 64(RE-08)/04/09 dated 24/11/2008 on the imported consignment of S S Seamless Tube imported by the appellant-importer. The importer has imported the aforesaid goods from the supplier of Japan on 27/10/2008 against the irrevocable letter of credit (LC).

4. At the time of placing order for import of the aforesaid good, there were no restrictions under Export and Import Policy 2004-09 and item was thus freely importable. But before the goods could enter into Indian territorial water the DGFT issued Notification No. 64(RE-08)/04-09 dated 24/11/08 making the import of S S Seamless Tube as restricted one and their import was allowed to be made under specific license. The aforesaid Notification was withdrawn by issue of yet another Notification No. 81(RE-08), dated 16/01/2009. In another words, restriction of import of the S S Seamless Tube remained operative from 24/11/2008 to 16/01/2009. The Revenue was of the view that since the importer appellant has imported the goods in this period in contravention of the provisions of the Notification No. 59(RE-208)/2004-2009 wherein it is mentioned that; “the matter has been examined. Accordingly, it is clarified that the import clearances without a license may be allowed in all cases where goods have been imported during the period of restriction, but the Bill of Entry for clearance has been filed

with the Customs on or after 16/07/2009, as the importer appellant have filed the Bills of Entry 450669 dated 12/01/2009, the concession given by the aforesaid circular is not applicable to them. Thus the goods have been imported in contravention of the DGFT policy circular which in turn made the good liable for confiscation under the provisions of Section 111(d) of the Customs Act 1962 and Therefore, the case was adjudicating upon by the Adjudicating Authority and vide the impugned order and the imported goods were confiscated under the provisions of Section 111 (o) of Customs Act 1962, however, the Adjudicating Authority has gave option to the redeem the goods imported under Section 125 of the Customs Act on payment redemption fine of Rs. 2,34000/-.

6. The appellant-importer in its grounds of appeal states that, undisputedly the order for import of goods were placed by the appellant when there was no policy restriction for import of such goods but before the goods could enter into Indian territorial water the restriction was imposed on such imports.

7. Subsequently, after realizing the difficulties being faced by the Trade and Importers the DGFT has issued another circular dated 12th January, 81(RE-08)04-09 in terms of which the circular restriction imposed earlier (vide Notification No.64) has been lifted and the imports of S S Seamless Tubes were made free. He further summits that the subsequent Notification allowing the goods to be imported without the specific license by the DGFT is clarificatory in nature as, it restores previous duty free import and, therefore, required to be given retrospective effect. In this regard, he relied upon the decision of Hon'ble Apex Court in the case of Collector of Central Excise, Shilliong vs. Wood Craft Products

Ltd. 1995(77)ELT 23(SE), wherein it is held that the amendments which are treated as clarificatory has to be taken that it was also there all the time. Further relying on the aforesaid decision of Hon'ble Supreme Court, the Apex Court in the case of WPL Limited vs. Commissioner of Central Excise, Meerut, (UP) 2005(181) ELT 359 (SC), wherein it is held that exemption withdrawal and its reinstitution, has to take effect as a clarificatory one and therefore should have been in its effect for all the time. He also impressed upon that in this case, the Bills of Entry although filed on 12/1/2009 however, this was only in to bond bill of entry, for warehousing under Section 46 of the Customs Act, and Ex-bond bill of entry the Bills of Entry were filled subsequent to the issue of Notification 81 (RE) with effect from 16.1.2009. This notification being clarificatory in nature required to be given retrospective effect. Therefore, on this ground also for import there need of any specific license by the appellant.

9. Ld. DR reiterates the grounds contained in the appeal memorandum and impugned order.

10. Heard the ld.D.R. and also perused the appeal record. The issue involved in this case has already been discussed in the opening paragraph of this order. The issue is of import of the S S Seamless Tubes during the intervening period when the import restriction was imposed on their import which was subsequently lifted by issue of another Notification as indicated above; also the Bills of Entry has been filed in this case for warehousing only Ex-bond Bill of Entry for clearance of imported goods were affected only when the restriction imposed was withdrawn by the issue of another circular. Therefore, going by the case of

Wood Craft Products WLL (supra)we are having no hesitation in holding that the impugned order of Commissioner imposing redemption fine on the goods imported by the appellant is contrary to the provisions Customs law read with DGFT circular of, and therefore, we set aside the same. As we set aside the Order-in-Original on merits, the appeal filed by the Revenue does not survive, and therefore, we proposed to reject the same. Accordingly, we allow the Appeal No C/524/209 and dismiss Appeal No C/560/2009.

(Dictated and pronounced in open Court)

Sd/ Sd/

(Bijay Kumar)
Member (Technical)

(P.K.Choudhary)
Member(Judicial)

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