IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.1

Customs Appeal No.75333 of 2016

(Arising out of Order-in-Original No.KOL/CUS/COMMISSIONER/PORT/06/2016 dated 03.02.2016 passed by Commissioner of Customs (Port), Kolkata.)

Y.R. Shankar Kumar Reddy,
Chartered Engineer
(Flat No.405, E-Block, 4th Floor, 1-10-31, Weikin Park, Begumpet, Hyderabad, Telangana-500016.)

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

.....Respondent

(15/1, Strand Road, Custom House, Kolkata-700001.)

APPEARANCE

NONE for the Appellant (s)
Shri S.Chakraborty, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 75679/2023

DATE OF HEARING : 13 June 2023
DATE OF DECISION : 13 June 2023

Per : ASHOK JINDAL :

The Appellant is in Appeal against the impugned order against imposing penalty of Rs.10.00 Lakhs under Section 112 of the Customs Act, 1962.

2. The facts of the case are that on gathering intelligence by DRI that M/s. SEW Infrastructure Ltd., Hyderabad has imported hydraulic drilling rigs and crawler excavator on payment of concessional rate of duty availing exemption under Notification No.103/2009-Cus dated 11.09.2009 as amended against EPCG license dated 12.01.2011 obtained from DGFT, Ahmedabad. But the said machines were not capable of doing work as detailed in the justification certificate signed

by the independent chartered engineer submitted while applying for the said license. Intelligence also revealed that the said machines were utilized at construction sites in Sikkim which were fully financed by Indian companies and nothing was being exported from there. It was also found that importer has imported 4(four) robotized equipment for short crete spraying, 2(two) hydraulic drilling rigs and 1(one) crawler excavator under cover of seven Bills of Entry against EPCG license No.0830004052 dated 12.01.2011 after paying concessional rate of duty. The importer also submitted installation certificate/usage certificate as required in the above Notification. Therefore, the proceedings were initiated against the importer as well as against the chartered engineer (the Appellant). The importer settled the case before the Settlement Commission, but the Appellant did not go to Settlement Commission. Therefore, after adjudication, a penalty of Rs.10.00 Lakhs was imposed on the Appellant. Aggrieved from the said order of imposition of penalty, the Appellant is before us.

3. The Appellant has sent a Written Submission praying for considering the case and pass order on merits. Therefore, the Appeal is taken up for disposal.

4. We find that the Appellant has submitted that the importer approached to the Appellant to issue a Certificate to enable them to apply for EPCG license in order to import capital goods. They produced a list of goods and technical note issued by their engineers showing the goods required to manufacture Ready Mix Concrete (RMC). The goods were not imported by that time by the Appellant, so can be inspected. Therefore, the Appellant issued the certificate relying on the technical note given to him in good faith. But, after the import it was found that the RMC cannot be manufactured with the goods imported by them. In that circumstances, there is no mala fide intention of the Appellant to aid the importer to avail ineligible concession by the importer. The Appellant has issued the certificate under bona fide belief that the technical write up given by the engineers was genuine. Therefore, he prayed that penalty imposed on the Appellant be dropped.

5. Heard the Ld.Authorized Representative for the Department, who submitted that the Appellant has issued nexus certificate without inspecting the goods in question, therefore, penalty was rightly imposed.

6. We find that in this case the Appellant has issued certificate on the basis of technical data provided by the Appellant before importation of the machine and to obtain EPCG license. In that circumstances, as the Appellant has issued certificate in good faith, therefore, no penal action is required by the Appellant.

7. In view of that, we drop the penalty imposed on the Appellant. Therefore the impugned order qua imposing penalty is set aside and in the result the Appeal filed by the Appellant is allowed with consequential relief.

(Operative part of the order was pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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