IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Cus. Appeal No. 75665 of 2014

Arising out of Order-in-Original No.46/CUS/CC(P)/WB/2013 dt. 07/03/2014 passed by the Commissioner of Customs (Prev.), W. B., Kolkata.

M/s. Sherowali Vanijya Pvt. Ltd.
2nd Floor, Room No. 210,
2, Rupchand Roy Street,
Kolkata-700007.

Appellant (s)

VERSUS

C. C., Kolkata (Prev.)
Customs House, 15/1, strand Road,
Kolkata-700001

Respondent (s)

Cus. Appeal No. 75666 of 2014

Arising out of Order-in-Original No.47/CUS/CC(P)/WB/2013 dt. 07/03/2014 passed by the Commissioner of Customs (Prev.), W. B., Kolkata.

M/s. Sherowali Vanijya Pvt. Ltd.
2nd Floor, Room No. 210,
2, Rupchand Roy Street,
Kolkata-700007.

Appellant (s)

VERSUS

C. C., Kolkata (Prev.)
Customs House, 15/1, strand Road,
Kolkata-700001

Respondent (s)

APPERANCE :

Shri B. N. Chattopadhyay, Ld. Advocate for the Appellant
Shri S. K. Naskar, A. C. (A. R.) for the Respondent

CORAM:

HON'BLE MR. P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)

ORDER NO.FO/75458-75459/2019

Date of Hearing : 26.04.2019
Date of Decision : 26.04.2019

PER V. PADMANABHAN :

The issue involved in both the appeals is identical and hence, both appeals are taken up for disposal through this common Order for the sake of convenience.

2. The brief facts of the case are that the appellants imported Betal Nuts from Bangladesh through Petrapole Land Custom Station. Bills of Entry were filed for clearance of the goods, declaring the value which worked out CIF less than Rs.110 per Kilogram. The Notification No. 12(RE-2013)/2009-2014 dt. 13/05/2013, issued by the Directorate General of Foreign Trade allowed free import of Betal Nuts of CIF value not less than Rs. 110 per Kilogram.

3. The Authority below was of the view that since the value of Betal Nuts imported was below Rs.110 per Kilogram, their import was not allowed free in terms of the above Notification of DGFT. Accordingly, the imported goods were ordered for confiscation by the Adjudicating Authority by passing the impugned Orders-in-Original. He took the view that the import was in contravention of Section 111(d) of the Customs Act, 1962. The goods were, however, allowed for redemption on payment of redemption fine. Penalty was also levied under Section 112 (a) of the Customs Act, 1962. It is also pertinent to record that Tariff Value has been fixed for imported Betal Nuts by CBEC vide Notification No. 93/2013-CUS (NT), dt. 30/08/2013 @ of US $ 1870 per metric tonne. The imported goods were ordered to be cleared on payment of Customs Duty at the Tariff Value fixed as above. These orders are challenged in the present appeals before the Tribunal.

4. With the above background, we heard Shri B. N. Chattopadhyay, Ld. Consultant for both the Appeals. Revenue is represented by Shri S. K. Naskar, Ld. DR.

5. The ld. Consultant submitted that he is not agitating against the portion of the Order directing payment of duty at the Tariff Value fixed by the CBEC. However, he submitted that the goods are not prohibited goods and will not be liable for confiscation as ordered by the Adjudicating Authority. He submitted that the Kolkata Bench of the Tribunal has decided the issue in the earlier appeal vide Final Order No. MO/75413-75414/FO/78114-78148/2017 dt. 28/11/2017. He requested that the said decision may be followed and order of confiscation may be set aside.

6. The ld. DR justified the orders passed by the Adjudicating Authority.

7. He submitted that the goods have been imported in contravention of the Notification issued by DGFT in as much as the imported Betal Nuts are of CIF value less than the limit of Rs.110 per Kilogram specified in value import.

8. Heard both sides and perused the record.

9. The question for decision in these present appeals is whether the Betal Nuts imported by the appellants are liable for confiscation, in view of the fact that the declared CIF value is less than Rs.110 per Kilogram specified for Free Import by DGFT in the Notification No. 12(RE-2013)/2009-2014 dt. 13/05/2013.

10. We note that an identical issue has been considered by the very same Bench in the Final Order relied by the Consultant. We note that the Tribunal in its earlier Order had considered the decision of the Hyderabad Bench of the Tribunal in the case of International Seaport Dredging Ltd. Vs. C.C. & ST., Visakhapatnam [2016 (342) E.L.T. 123 (Tri. Hyd.). Finally, the

Tribunal took the view that since the goods were cleared after collecting duty on the basis of tariff value, it cannot be held that the goods are prohibited. The Tribunal observed as follows:-

> ***"6.****In the instant case there is no prohibition in force against import of the vehicles. There is only restriction in Import Licensing Notes of Chapter 87 of Import Export Policy, 2004-2009, that importation of new vehicles shall be permitted only through specified Customs Port at Nhava Sheva, Kolkata, Chennai, ICD-Tuglakhabad, Delhi Air Cargo and Mumbai Port. Other conditions of import are also specified in the said licensing notes. However, there is no prohibition on their importation. By any stretch of imagination, the word 'restriction' cannot be equated or read as 'prohibition'. This being so, invocation of Section 111(d) is not in order. Possibly one or more of the situations attracting confiscation as listed out in Section 111(a) to (p) may well have been applicable to the facts of this case, but definitely not Section 111(d). In the event the goods are not liable for confiscation under Section 111(d) and by implication the invocation of Section 112(a) and Section 125 are also not sustainable. We, therefore, have no hesitation in setting aside the impugned order to the extent of confiscation of the goods under Section 111(d), imposition of redemption fine under Section 125 and imposition of penalty under Section 112(a) of the Act ibid."*

11. By following the above Order of the Hyderabad Bench, which was followed in the earlier Order of this Bench, we set aside the order of confiscation of the imported Betal Nuts. Redemption fine and penalty are also set aside. However, the duty paid as per tariff value is upheld. In the result, the appeals are disposed off in the above terms.

(Dictated and pronounced in the open Court.)

Sd/-
(P. K. Choudhary)
Member (Judicial)

Sd/-
V. PADMANABHAN
MEMBER (TECHNICAL)

Pooja