IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.

Appeal No. C/602/2009

(Arising out of Order-in-Original No. 54/2009/CAC/CC/(I)/SHH/Gr.IV/ dt. 25.03.2009 passed by the Commissioner of Customs (Import) Mumbai)

Mazagaon Dock Ltd. : **Appellant**

VS

Commissioner of Customs (Import), Mumbai : **Respondent**

Appearance

Shri T. Viswanathan, Advocate for Appellant

Shri Manoj Kumar, Asstt. Commr. (A.R) for respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)
Hon'ble Mr. C.J. Mathew, Member (Technical)

Date of hearing : 12/02/2018
Date of pronouncement : 23/05/2018

ORDER NO. A/86485/2018

Per : Ramesh Nair

The facts of the case are that Appellant is a Govt. of India undertaking engaged in ship building and are also registered as Custom Bonded Warehouse for manufacture of goods in-bond. The Appellant imported Hot Rolled Plates falling under Heading 72.08 vide three Bills of Entry i.e. 880969 dt. 02.02.2009, 881342 dt. 04.02.2009, 883767 dt. 20.02.2009 and sought to avail exemption from under Notification No. 21/2002-Cus, Sr. No. 356. The said goods were ordered to be confiscated by the adjudicating authority on the ground that import of hot rolled plates is restricted vide Notification No. 63/(RE-2008)/2008-09 dt.

24.11.08 read with clarification issued by DGFT vide their letter F. No. 01/89/180/46/AM09/PC-II(A)pt. dated 18.02.2009 which requires a specific import licence for clearance of the same. That the importer failed to produce the import licence, the goods are liable for confiscation under section 111 (d) of Customs Act, 1962 read with section 11 (1) of the foreign Trade (Development and Regulation) Act, 1992 and section 2 (33) of the Customs Act, 1962. The adjudicating authority ordered for confiscation of goods in terms of Section 111 (d) of the Customs Act, 1962 with an option to redeem the same on redemption fine of Rs, 18 lakhs. A penalty of Rs. 2 lakhs was also imposed upon the Appellant. Hence the present appeal.

2. Shri T. Viswanathan, ld. Counsel appearing for the Appellant submits that the licensing note to chapter 89 of the section XVII of ITC (HS) permits import of goods without any license to a unit engaged in the manufacture of ships. He also submitted Circular dt. 29.04.2009 issued by DGFT and emphasized on para 3 of the said circular which says import of goods effected between 21.11.2008 and 18.02.2009 are allowed without any specification, therefore two Bills of Entry dt. 02.04.2009 and 04.02.2009 are entitled for the benefit of the said circular. As regard goods covered by Bill of Entry dt. 20.02.2009, he submits that order for goods was placed upon M/s M.S.Steel Plates & Structurals DNV Grade on M/s Merton Williams Co. UK on 11.08.2008 for a total quantity of 776.31MT of Steel Plates out of which 200 MT was to be supplied immediately and the balance was to be supplied in 10 weeks. The Ship :Rickmer Hazira/713" was allotted by the Ministry of Shipping Bill for carrying leftover 68 MT Steel and the ship could sail

from port Antwerp on 14.02.2008 only, instead of the normal scheduled date of 15 Nov, 2008 as the ship had to undergo repairs after loading of cargo. The L/C which opened on 05.09.2008 for the import of steel plates expired on 10.11.2008 which was before the actual shipment of the consignment owing to late allotment of the ship by Ministry of shipping. The supplier nevertheless had accepted the payment on collection basis instead of LC being renewed. He submits that looking to the facts of the case, in case of Bill of Entry dt. 02.02.2009 and 4.02.2009 there is no ground to confiscate the goods. In case of Bill of Entry No. 20.02.2009 the goods were contracted to be bought and were already in transit when they were held to be restricted. He submits that looking to the facts of the case, the confiscation of the goods is liable to be set aside.

3. Shri Manoj Kumar, ld. AC (AR) appearing for the revenue reiterates the findings of the impugned order.

4. We have gone through the facts of the case. In case of goods covered by the Bill of Entries dt. 02.02.2009 and 04.02.2009, we find that the DGFT vide policy Circular No. 83 (RE – 2008)/2004 – 2009 dt. 29.04.2009 has clarified that the goods imported for the period 21.11.2008 to 18.02.2009 shall be allowed to be imported without licence. We thus hold that the goods covered by aforesaid Bill of Entry are not liable for confiscation and therefore not liable for any redemption fine and penalty. As regard Bill of Entry dt. 21.02.2009, we find that firstly the goods were contracted to be brought/ imported in India even before the restriction came into effect. Further the Appellant is Govt. of India undertaking and the goods could have been imported only after

allotment of ship by the Ministry of Shipping. In such circumstances we do not find it appropriate to impose such quantum of redemption fine in respect of said bill of entry No. 883767 dt. 21.02.2009 as the goods were not intended to be imported in violation of law. Thus in respect of such Bill of Entry dt. 21.02.2009 we reduce the redemption fine to Rs. 25,000/- and set aside the penalty. The impugned order is modified to the above extent. The appeal is partly allowed in above terms.

(Pronounced in court on 23/05/2018)

(C.J.Mathew)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

SM.