CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH – COURT NO. 1

Customs Appeal No: 85971 of 2013

[Arising out of Order-in-Original No: 13/2013/CAC/CC(E)/YG/GR.VII dated 30th January 2013 passed by the Commissioner of Customs (Export), Mumbai.]

Essar Steel India Ltd. … ***Appellant***
27 Km Surat Hazira Road, Surat

versus

Commissioner of Customs (Export) ***…Respondent***
New Custom House, Ballard Estate, Mumbai – 400 001

WITH

(i) Customs Appeal No. 86414 of 2013 (Nitin Bhatt); (ii) Customs Appeal No. 86415 of 2013 (Ramchandra Bapu Kadam); (iii) Customs Appeal No. 86416 of 2013 (P. Pankajakshan); (iv) Customs Appeal No. 86417 of 2013 (Manish Bakriwala)

APPEARANCE:

Shri Vipin Jain, Advocate for the appellants

Shri RK Dwivedi, Additional Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A/ 86406-86410 / 2019

DATE OF HEARING: 20/02/2019
DATE OF DECISION: 20/08/2019

PER: C J MATHEW

These appeals arise from order-in-original no. 13/2013/CAC/ CC(E)/YG/GR.VII dated 30th January 2013 of Commissioner of Customs (Export), Mumbai and pertain to the import of two ‘harbour mobile cranes’ *vide* bill of entry no. 520818.09.12.2004 . The primary allegations against the importer which were upheld are that the duty of ₹ 4,42,56,732/- foregone on these cranes had not been debited in the licence issued under the ‘export promotion capital goods scheme’ of the Foreign Trade Policy and that the permissible debit was limited to ₹ 60,59,395/-. The impugned order has noticed that the appellant-importer had initially sought exemption under notification no. 21/2002-Cus dated 1st March 2002 (serial no. 231) and 6/2002-CEx dated 1st March 2002 (serial no. 196A) as well as for benefit under notification no. 97/2004-Cus dated 17th September 2004 intended for operationalizing the above scheme in the Foreign Trade Policy.

2. During the proceedings before the adjudicating authority, it was claimed by the appellants herein that though the original licence issued under the scheme was limited to duty saved of ₹ 60,59,395/- there was a subsequent enhancement by the licensing authority to cover the shortfall in the duty saved arising from the coverage of the present imports in the scheme. It was also their contention that the export obligation, in accordance with the scheme, and the relevant

notification, had been fulfilled in proportion to the enhanced duty saved.

3. The impugned order, nevertheless, has found that the import having been effected under claim of notifications, both under the scheme and outside the scheme, implied the intention to avail ineligible benefits. It was also held that the failure to debit the full amount of duty saved could not be, as contended by the appellants herein, attributed to the assessing officer but establishes suppression on the part of the importer. The import was, therefore, denied the benefit of the claim with the consequence of confirmation of differential duty amounting to ₹4,42,56,732/-, along with interest thereon, and imposition of penalty of like amount on M/s Essar Steel India Ltd under section 114A of the Customs Act, 1962 besides imposition of penalties under section 114AA of Customs Act,1962 on the four other appellants.

4. We have heard Learned Counsel and Learned Authorised Representative at length.

5. As the two exemptions which were cited in the bill of entry are mutually exclusive, only the eligible concession/exemption could have been made extended to the import by the assessing officer. From the records, we find that such an elimination has not been carried out despite which the adjudicating authority has proceeded on the

assumption of lack of eligibility for exemption under notification no. 21/2002-Cus dated 1st March 2002 along with notification no. 6/2002-C.Ex dated 1st March 2002. It also appears that the absence of debit of the entire duty saved in the licence issued under the 'export promotion capital goods' scheme was held to suffice for recovery of differential duty. The impugned order reasons that the amended licence was not produced before the assessing officer with deliberate intent to evade liability. That conclusion, however, did not prevent the adjudicating authority from taking notice that the importer did not utilize the unutilized amount of duty saved limits for effecting any other import or was deficient in fulfilling export obligation to the extent of duty actually saved by resort to the scheme. In these circumstances, we find ourselves unable to concur with the adjudicating authority that the benefit of exemption under notification no. 97/2004-Cus dated 17th September 2004 should be rejected peremptively merely because coverage under two benefits was claimed.

6. It was for the adjudicating authority to determine, in the absence of such exercise by the assessing officer at the time of clearance, the eligibility for import under the scheme for which licence of competent authority was furnished. Any consequence, in terms of duty, confiscation or penalty, should have emanated from conformity, or lack thereof, with the said scheme. We, therefore, set aside the impugned order and remand the matter back to the original

authority to complete the process of adjudication on the lines indicated *supra*.

7. The penalties under section 114A and section 114AA of Customs Act, 1962 are also set aside to be determined afresh by the original authority in accordance with law.

(Order pronounced in the open court on 20/08/2019)

(C J Mathew)
Member (Technical)

(Ajay Sharma)
Member (Judicial)

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