CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 02

Customs Appeal No.229 of 2008

(Arising out of Order-in-Original No. 15/2008/CAC/CC(I)/SP/Gr.VA dated 01/02/2008 passed by Commissioner of Customs (Import), NCH Mumbai)

Grasim Industries Ltd. **.....Appellant**
31, Cement Division, 1st Floor, Ahura Centre,
Mahakali Caves Road, Andheri (East),
Mumbai – 400093.

VERSUS

Commissioner ofCustoms (Import) Mumbai **.....Respondent**
New Customs House, Ballard Estate,
Mumbai – 400001.

Appearance:

Shri Nishith Jain, Advocate for the Appellant
Shri K. K. Srivastav, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87038/2020

Date of Hearing: 13/03/2020
Date of Decision: 13/03/2020

PER : S.K. MOHANTY

Briefly stated, the facts of the case are that the appellants herein are engaged *inter alia*, in the manufacture of cement; that during the disputed period, they have filed the Bill of Entry dated 14.11.2006 for clearance of "Municipal Solid Waste Treatment

Plant", classifying the same under CTH 84798992, wherein the prescribed rate of Additional Duty of Customs (CVD) was 'NIL'; that upon clearance of goods and during the Post Clearance Audit (PCA), the Customs department entertained the view that the said imported goods should merit classification under CTH 84798999, attracting CVD @ 16% *ad valorem*, on the ground that the imported machines were not capable of manufacturing briquettes. Accordingly, a Consultative letter dated 19.01.2007 was issued by the department to the appellants for payment of differential duty along with interest, owing to wrong classification of the machines made in the Bill of Entry. The appellant had paid the differential amount as per the said letter into the Government exchequer on 01.03.2007. Thereafter, the appellant had filled an appeal before the learned Commissioner (Appeals), which was disposed of vide order dated 22.06.2007 by way of remand to the original authority. The said order had directed the original authority for issuance of the show cause notice and thereafter for de-novo adjudication of the matter. Upon issuance of the show cause notice dated 28.09.2007, the learned Commissioner of Customs (Import) has passed the Order-in-Original dated 01.02.2008 (hereinafter, referred to as " the impugned order"), in confirming the proposals made in the notice dated 28.09.2007. In support of the adjudication order, the learned original authority has held that the imported machines are capable of manufacturing fuel waste in granule form, which are captively consumed and that the granules were never converted into the briquettes inasmuch as the same are never used in the cement plant. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the tribunal.

2. Learned Advocate appearing for the appellants submitted that the imported goods are correctly classifiable under CTH-847989.92 for the reason that the machineries were imported to convert the Municipal Waste into solid (granules) briquettes by removing liquids, separating in-organic materials etc. He further submitted that the exemption provided under Sl. No. 84 of Notification No. 6/06-C.E. is available to the appellant. Learned Advocate further submitted that the extended period of limitation cannot be invoked in absence of proper substantiation with regard to the allegations of suppression of facts, mis-declaration etc. It is the further submission of the learned Advocate that the appellant had correctly furnished the declaration with regard to the imported goods and thus, claiming classification under particular tariff item does not amount to mis-declaration or suppression and accordingly the provisions of section 111 (m) *ibid* are not invokable for confiscation of goods and for imposition of redemption fine. To support the said stand, learned Advocate has relied upon the judgement of Hon'ble Supreme Court in the case of Collector of Customs, Calcutta Vs. Tin Plate Co. of India Ltd. – 1996 (87) ELT 589 (SC).

3. On the other hand, learned A. R. appearing for the Revenue reiterated the findings recorded in the impugned order.

4. Heard both sides and perused the case records.

5. The description of goods contained in Chapter Heading 84798992 refers to *"briquetting plant and machinery intended for manufacture of briquettes from agricultural and municipal waste"*. The facts are not under dispute that the machinery in question was imported by the appellants with the sole objective of converting the municipal solid waste into granule by removing liquid and other material etc., and that the waste after shredding was used as fuel by them in the manufacture of the final product i.e. Cement. In this case, no submissions were made by the appellants contending that the imported machinery was used for manufacture of briquettes from the municipal waste. Thus, the machine in dispute was never intended for converting municipal and agricultural waste into briquettes. Therefore, we are in agreement with the observations made by the original authority in the impugned order that the classification made by the appellant in the Bill of Entry in respect of the imported machinery on that Chapter 84798992 is not proper and correct. We find that the appellant had already paid the duty amount along with interest during the course of adjudication proceedings and the same has also been appropriated in the impugned order.

5.1. In this case, it is not the case of Revenue that the description given by the appellantsin the Bill of Entry does not tally with the corresponding import documents such as invoice, packing list, bill of leading etc., filed at the time of importation of the goods. The dispute involved in this appeal for consideration are regarding correct classification of imported goods and availability of the benefit of duty exemption provided under the notification. The department in this case has proceeded against the appellants for confiscation of goods under Section 111(m) *ibid* and for imposition of the redemption fine. The provisions under Section 111(m) *ibid* have the applicability in context with wrong declaration of value or other particulars made in the declaration by the importer. Since there is no mis-declaration, suppression of value by the appellants and the imported goods in question are not available for confiscation, the rigor of the said statutory provision cannot be attracted for imposition redemption fine on the appellant. Further, the appellant had only claimed the benefit of 'nil' rate of duty in respect of the imported goods due to the reason of their understanding that the goods should appropriately be classifiable under sub-heading No. 84798992. Law is well settled that claiming classification under particular tariff item does not amount to mis-declaration or suppression, but it is a matter of belief of the assessee based on his understanding of the tariff entry. In this case, the department has not adduced any evidence to conclusively prove that availment of the benefit of 'nil' rate of duty was owing to the reason of collusion or any willful mis-statement or suppression of facts. Therefore, In absence of proper substantiation with regard to involment of the appellants in fraudulent activities, the provisions of Section 114A *ibid* shall not be applicable for imposition of penalty on them.

6. In view of the foregoing discussions and analysis, we are of the considered opinion that redemption fine and penalty imposed on the appellant cannot be sustained. Therefore, the impugned order, to the extent it has confirmed the fine and penalty on the appellant is set aside and the appeal to such extent is allowed in favour of the appellant.

7. In the result, the appeal is partly allowed by setting aside the fine and penalty imposed on the appellant.

(Operative portion of the order pronounced in the open court)

(S.K. Mohanty)
Member(Judicial)

(Sanjeev Srivastava)
Member (Technical)

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