CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. III

Customs Appeal No. 667 of 2012

(Arising out of Order-in-Original CAO No. 15/2012/CAC/CC/BKS dated 22.03.2012 passed by the Commissioner of Customs (Adjn.), Mumbai)

M/s Graphite India Ltd. **.... Appellant**
Bakhtawar, 2nd Floor, Nariman Point,
Mumbai - 400021

Versus

Commissioner of Customs, Mumbai **.... Respondent**
New Custom House, Ballard Estate, Mumbai-400001

Appearance:

Sri D.K. Agarwal, Advocate with Sri Mayank Jain, C.A. for the Appellant

Sri Ram Kumar, AC, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86044 / 2022

Date of Hearing: 19.09.2022
Date of Decision: 19.09.2022

Per: Dr. Suvendu Kumar Pati

This appeal arises from Order-in-Original CAO No. 15/2012/CAC/CC/BKS dated 22.03.2012 passed by the Commissioner of Customs (Adjn.), Mumbai confirming interest under Section 28AB of the Customs Act, 1962 on the duty amount of Rs.33,36,786/- that was settled before the Settlement Commission by the DEPB Scrip holder/exporter M/s Rajat Pharmachem Ltd. alongwith equal amount of penalty on both duty amount and interest under Section 14A of the Customs Act, 1962.

2. Facts of the case, in brief, is that Directorate of Revenue Intelligence investigated into cases of overvaluation of goods exported that revealed that many of the merchant exporters inflated the FOB value of their exports significantly and obtained DEPB Scrips/DFIA license against such exports, which they were selling away to various transferees on the basis of endorsement of transferability by the DGFT. Appellant in the present case is one of the transferees of the DEPB scrip and DFIA license. Accordingly, show-cause notices were issued to exporters as well as transferees and the order under challenge that confirmed the above interest and penalty against the appellant was passed in respect of many violators including the appellants. In appeals preferred by the other violators, this Tribunal vide its Order No. A/2919 – 2994/2015/CB dated 31.08.2015 had allowed appeals of more than 60 such exporters/transferees by setting aside the demand of duties and penalties imposed through a common order passed against them. Appeal of this appellant was heard by another Bench of this Tribunal, who also vide Final Order No. A/86745/2019 dated 17.09.2019 had set aside the impugned order and remanded the matter back to the original authority for a fresh decision in accordance with law. Appellant preferred a Customs Appeal No. 03 of 2021 against such remand order and got the matter remanded back to this Tribunal for *de novo* consideration of the appeal.

3. During the course of hearing of this appeal learned Counsel for the appellant Mr. D.K. Agarwal submitted that Order-in-Original has been set aside in respect of all other persons except the present appellant whose appeal could not be listed before this Tribunal on 18.08.2015, on which date hearing of the other appeals had taken place. He further submitted that there was a clear finding of this Tribunal given in all those 60 plus appeals on 31.08.2015, basing on the judgments of East India Commercial Companies and Sneha Sales Corporation reported in *1983 (13) ELT 1352 and 2000 (121) ELT 577 (SC)* respectively, that orders of confiscation, demands of duty, interest and penalty would not held good in the circumstances of the cases and in any case, transferees in cases of those appeals, who had no knowledge of mis-representation by the exporters cannot be made liable for penal action, for which also the OIO is not sustainable.

4. Having regard to the fact that the appellant stands in the similar footing with all other appellants whose appeals were decided vide Final Order No. A/2919–2994/2015/CB dated 31.08.2015 setting aside the impugned Order-in-Original, including that of M/s Indorama Synthetics Pvt. Ltd. as referred in para - 6 of the Tribunal’s order dated 17.09.2019, which is directed by the Hon’ble Bombay High Court to be considered in this matter also and in carrying forward the judicial precedent set by this Tribunal, so as to ensure consistency and predictability of the orders of this Tribunal, the following order is passed: -

The appeal is allowed and the impugned order passed by the Commissioner of Customs (Adjn.), Mumbai in Order-in-Original No. 15/2012/CAC/CC/BKS dated 22.03.2012, to the extent of imposition of interest and penalty against the present appellant is hereby set aside.

(Operative portion of the order pronounced in open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Saniv Srivastava)
Member (Technical)

Sinha