CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Customs Appeal No. 86614 of 2021

(Arising out of Order-in-Original No. 25/08 CC (I) JCH dated 25.04.2008 passed by the Commissioner of Customs (Import), JNCH, Nhava Sheva, Mumbai-II.)

M/s. Gera Development Pvt. Ltd. ....Appellant
200 Gera Plaza, Boat
Club Road, Pune-411 001.

VERSUS

Commissioner of Customs, Nhava Sheva-I ....Respondent
JNPT, Customs House, Nhava Sheva,
Taluka Uran, Dist. Raigad,
Maharashtra – 400 707

APPERANCE:

Shri V. M. Doiphode, Advocate for the Appellant

Shri Ram Kumar, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85235/2023

Date of Hearing: 31.01.2023
Date of Decision: 31.01.2023

PER: DR. SUVENDU KUMAR PATI

In this appeal, Appellant has challenged again the legality of the order passed by the Commissioner of Customs (Import), JNCH, Nhava Sheva, Mumbai-II on dated 25.04.2008 that was earlier assailed before this Tribunal, heard by it and disposed of by way of allowing the appeal vide detail order passed in order No. A/86331-86332/2018 on dated 11.05.2018. One addendum/corrigendum issued on a subsequent date on 26.06.2008 by the Commissioner

(Import) confirming imposition of Antidumping duty of Rs.73,49,724/- and appropriating the same amount is also assailed in this fresh appeal.

2. Bereft of unnecessary detail what is required to be placed on record is that certain imports of glazed /polished porcelain tiles were made by the Appellant in 2008 and two bills of entries were filed on 04.03.2008. Investigation was conducted on the basis of intelligence gathered concerning country of origin of the product and the genuineness of the manufacturing exporter. During such investigation, Appellant paid Antidumping duty of Rs.73,49,724/- allegedly leviable on the goods and attended adjudication process by waving off show-cause notice, perhaps for expeditious release of its goods. Concerned Commissioner adjudicated the matter and order for confiscation of goods as well as imposed redemption fine of Rs.17 lacks with penalty of Rs.5 lacks under Section 112(a) of the Customs Act. Appellant assailed the said order before this Tribunal that was allowed. Consequently Appellant sought for refund of Antidumping duty etc. but received reply to the effect that no such Order-in-Original No. 47/2008 of CC JCH dated 25.04.2008 was available at their end that relates to the Appellant which has been set aside by this Tribunal. Then the matter took a *topsy-turvy* tern through a series of protacted correspondence including RTI applications and ultimately it was discovered that the said order was bearing No. 25/2008 and not 47/2008 and in respect of order No.25/2008 one corrigendum, as referred above, was issued by the Commissioner of

Customs. Appellant is before us challenging the legality of the said order No. 25/2008 and its corrigendum.

3. During the course of hearing of the appeal, the matter was argued at length. Learned Counsel for the Appellant Mr. V. M. Doiphode pointed out that they had wrongly typed the adjudication No. as 108 which should have been correctly typed as - /08 since no order number was originally put in the adjudication order, copy of which is also annexed by him in his additional submissions but he strongly pleaded that notice from the Tribunal was issued with appeal No. 47/2008 to which Respondent-Department contested and the order was also issued by this Tribunal against the said Order-in-Original dated 25.04.2008 with appeal No. as 47/2008. He also argued with affirmation that no addendum/corrigendum was ever issued to them for which he had to approach the CPIO through RTI application and ultimately received the copy on 26.11.2019 with order No. 25/2008.

4. Learned Authorised Representative Mr. Ram Kumar countered the submissions by stating that since no appeal order was available against Order-in-Original No. 25/2008 and corrigendum had not been challenged before this Tribunal, Appellant's claim for refund of Antidumping duty, that was appropriated through addendum/corrigendum has been rightly rejected by the refund sanctioning authority that needs no interference by this Tribunal.

5. We have taken note of the submissions and perused the case record. At the outset we must make it clear that appeal number, file number, date of order, authority passing the order and the party being same, error in typing out a wrong appeal number would not have any impact on the decision rendered by this Tribunal in respect of the said order and, therefore, there is no requirement of agitating the same matter again before this Forum. We are, therefore, of the considered view that order of this Tribunal passed vide order No. A/86331-86332/2018 remains valid against the order of the Commissioner of Customs (Import), JNCH, Nhava Sheva, Mumbai-II passed on dated 25.04.2008 in respect of this Appellant.

6. Now coming to the legality of the order subsequently passed through an addendum/corrigendum appropriating the amount paid by the Appellant towards Antidumping duty etc., it can be said that the said order is passed without authority of the law since it is a settled principle of law, as has been affirmed by the Hon'ble Supreme Court in the case of *State Bank of India & Ors. Vs. S.N. Goyal judgment dated 02.05.2008* and *Hari Singh Mann Vs. Harbhajan Singh Bajwa & Ors. judgment dated 01.11.2000* and in many other decisions, that the court becomes *functus officio* the movement an official order disposing of case is signed and such an order cannot be altered except to the extent of correcting a clerical or grammatical error while a Quasi-Judicial Authority will become *functus officio* only when its order is pronounced, or published/notified or communicated (put in the course of transmission) to the party concerned. We are,

therefore, of the view that such invalid order passed subsequent to the order signed, pronounced and communicated has to be set aside and we do so. Needless to mention here that when this Tribunal had already given a finding that there was no substance in the allegation of the Revenue (Respondent) that goods were not manufactured by M/s. Southern Building Materials & Sanitary Co. Ltd. so as to deny exemption of Antidumping duty under Notification No. 72/2005-Cus. and 73/2003-Cus, on this score also confirmation and appropriation of Antidumping duty through an addendum/corrigendum is infructuous. Hence the order.

ORDER

7. The appeal is allowed to the extent of setting aside of the addendum/corrigendum dated 26.06.2008 issued subsequent to the order of Commissioner of Customs (Import), JNCH, Nhava Sheva, Mumbai-II originally passed on dated 25.04.2008. Order of CESTAT against the Commissioner's order dated 25.04.2008 stands as it is. Appellant is entitled to consequential relief, if any.

(Operative portion of the order pronounced in open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

Prasad