CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85678 of 2020

(Arising out of Order-in-Original No. 84/CAC/2019-20/Commissioner of Customs/MKK dated 11.02.2020 passed by the Commissioner of Customs, Import-II)

M/s C J Shah & Co **.... Appellant**
105, Bajaj Bhavan 10th Floor, Nariman Point,
Mumbai – 400021.

Versus

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

WITH

Customs Appeal No. 85691 of 2020

(Arising out of Order-in-Original No. 91/2019-20/CAC/CC/IMP-II/MKK dated 19.02.2020 passed by the Commissioner of Customs, Import-II)

M/s West India Continental Oils & Fats Pvt. Ltd. **.... Appellant**
122, Ajay Industrial Estate B, Anjarwadi Dr Mascarenhas Road, Mazgaon, Mumbai – 400010.

Versus

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

Appearance:

Ms. Shamita J. Patel, Advocate for the Appellant

Shri Ram Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85315-85316/2023

Date of Hearing: 01.03.2023

Date of Decision: 01.03.2023

Per: Anil G. Shakkarwar

The above stated two appeals are taken together for decision since the issue involved in both of them is the same.

2. Brief facts of the case are that para 3.04 and 3.05 of Foreign Trade Policy provides for Merchandise Exports from India Scheme (MEIS). Through the said scheme, duty credit scrip is issued to the importer and the facility has been provided through notification No. 24/2015-Customs dated 08.04.2015 to debit basic Customs duty and additional Customs duty in the said scrip and get goods cleared without cash payment of Customs duty. The appellant C J Shah & Co were issue with a show cause notice stating that the appellant had debited education cess, higher secondary education cess and social welfare surcharge from the said scrip and therefore they were required to pay education cess, higher secondary education cess and social welfare surcharge through cash payment. Similar show cause notice was also issue to the appellant West India Continental Oils and Fats Pvt. Ltd. Original authority separately adjudicated the above stated show cause notices and ordered the respective appellants to pay education cess and higher secondary education cess in cash and dropped the demand in respect of social welfare surcharge in view of CBIC circular No. 02/2020-Customs dated 10.01.2020, wherein under clause 11 it was provided that the past cases of debits of social welfare surcharges already made in duty credit scrip may not be disturbed and cash recovery of the same shall not be initiated upon. The appellants preferred appeals before this Tribunal in respect of order to pay in cash education cess and higher secondary education cess in both the cases.

3. Heard the learned counsel for the appellant, learned Counsel for the appellant has submitted that though the said circular was in respect of non-recovery of social welfare surcharge, Hon’ble High

Court of Madras in the case of KTV Health Food Pvt. Ltd. Vs Commissioner of Customs reported at 2022 (381) ELT 66 (Madras) has applied the said circular for non-recovery of education cess, and higher secondary education cess and requested to follow the said ruling and allow the appeal.

4. Heard the learned AR. He has supported the impugned order.

5. I have carefully gone through the record of the case and submissions made. The Hon'ble Madras High Court in the above stated ruling as held in para 26 to 29 as follows:-

> *"26. When such a circular was issued by the Customs Department and the same having been implemented in respect of various people like the petitioner, the benefit of the said circular cannot be denied to the petitioner on the alleged reason that, the education cess or the higher and secondary education cess being a different component cannot be treated as customs duty or additional customs duty and therefore, the benefit conferred under Clause 11 of the said circular cannot be made available to the petitioner. The said view taken by the respondent/Customs Department, in the considered opinion of this Court, in view of the aforestated legal position, is untenable and unacceptable.*
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> *27. The quoting of the Hon'ble Supreme Court judgment in Unicom Industries case is a wrong fitment of the citation, as the issue decided in the said case, in fact the principle enunciated in that case if it is culled out, certainly would support the case of the petitioner and not the respondent. Therefore, this Court has no hesitation to state that, the reasons stated in the impugned order rejecting to give the benefit under Circular No. 2/2020 is not supported by any legal basis. Therefore, the said reasons are unsustainable and therefore, based on such reason, since the rejection has been made through the impugned order, it is also equally unsustainable. Hence, it is liable to be interfered with.*
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> *28. In view of the aforesaid discussions, this Court is inclined to pass the following orders :*
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> > *"The impugned order is hereby quashed. As a sequel, there shall be a direction to the respondent to give the benefit of Clause 11 of Circular No. 2/2020, dated 10.01.2020 to the petitioner."*

> *29. With the above directions, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed."*

6. In view of the ruling by Hon'ble Madras High Court. I applied the benefits conferred under clause 11 of circular No. 02/2020-Customs dated 10.01.2020 to education cess and higher secondary education cess. In the result the confirmation of demand in both the Order-in-Original is set aside. In above terms both the appeals are allowed.

(Order dictated and pronounced in open court)

(Anil G. Shakkarwar)
Member (Technical)

Sinha