CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Customs Miscellaneous Application No. 85541 of 2023
(on behalf of Appellant)
in
Customs Appeal No. 86250 Of 2013

(Arising out of Order-in-Original No. 33/CEX/2012-13 dated 30.11.2012 passed by Commissioner of Central Excise, Pune-III)

M/s Indo Schottle Auto Parts Pvt. Ltd. **.....Appellant**
Gat No. 378/387/389, Village Urawde, Tal-Mulshi,
Dist. Pune-412115.

VERSUS

Commissioner of Customs Excise and Service Tax, Pune-III **.....Respondent**
ICE House, 41-A, Sassoon Road,
Pune-411001.

Appearance:

Shri Jitu Motwani, Advocate for the Appellant
Shri Sydney D'Silva, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M. M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86191/2023

Date of Hearing: 07.08.2023
Date of Decision: 07.08.2023

PER : S.K. MOHANTY

Heard both sides and examined the case records.

2. Applicant/Appellant has filed this miscellaneous application under Rule 10 of the CESTAT (Procedures) Rules, 1982 for consideration of the additional grounds as a part of the appeal memorandum for hearing and disposal of the appeal. On perusal of the said application, we find that the Appellant has enclosed therewith the Minutes of Meeting of Approval Committee for EOU, permitting the Appellant to regularize the imports already made during the disputed period. Since, the certificate dated 08.07.2015 issued by the Chairman-cum-Development Commissioner of SEEPZ-SEZ is in

context with the subject dispute, we are of the view that the additional grounds urged now can be considered as a part of appeal records and accordingly, the same are taken into consideration for the purpose of this present appeal.

3. In this case, the Department proceeded against the Appellant for contravention of the Notification No. 52/2003-Cus dated 31.03.2003, alleging that the Appellant had procured the capital goods in excess as against the sanctioned limit prescribed in the Letter of Permission (LOP) issued by the Development Commissioner, SEEPZ-SEZ. The proceedings were initiated on the basis of audit objection raised by the Audit wing of the Department. The show-cause notice issued in this regard was adjudicated vide the impugned order dated 30.11.2012, wherein the learned Commissioner of Central Excise, Pune-III has confirmed the customs duty demand of Rs.6,27,68,000/- under the provisions of Section 28 read with Section 142 of the Customs Act, 1962. Further, the impugned order has also confirmed the interest demand under Section 28AB *ibid* and also imposed redemption fine and penalty of Rs. 10 lakhs and Rs.6,27,68,000/- respectively on the Appellant. Feeling aggrieved with the impugned order, the Appellant has preferred this appeal before the Tribunal.

4. On perusal of the case records, we find that the competent authority i.e., the Development Commissioner of SEEPZ Special Economic Zone, Mumbai vide letter dated 11.01.2010 and 22.04.2010 had requested the Audit wing of the department to drop the show-cause proceedings initiated against the Appellant, holding that the capital goods imported by the Appellant were within the validity of LOP and within the approved list issued by the licensing authority. On reading of the said letters together with the letter dated 30.08.2010 issued by SEEPZ-SEZ, we find that there was no necessity of issuance of the show-cause notice, seeking confirmation of the adjudged demands on the Appellant. Further, we also find that in the meeting held by the Approval Committee for EOU, the Chairman-cum-Development Commissioner has agreed to the imports made by the Appellant during the disputed period and also held that such imports were within the permissible limit of LOP. The relevant paragraphs in the said minutes of meeting are extracted herein below:

'The representative of the unit informed the Committee that they have effected total import of capital goods permitted to the unit during the five year block period of Rs. 5726/- lakhs as against the total permitted value import of capital goods valued at Rs. 4834/- lakhs. Thus there is no excess import of Capital Goods. The Audit has also closed the Para.

The Committee noted that the unit had imported Capital Goods during the intervening period i.e. 31.10.2006 to 13.03.2007 in which the permission for Revision of Projection was under consideration. Such import was considered in the approval granted by Development Commissioner revising the import export projection for the remaining period of 5 year block period i.e. 2007-08 to 2008-09. Thus the total import of Capital Goods effected during the five year block period is within the permitted value.

The Committee considering the fact that the projection for the period 2004-05 to 2008-09 was approved and thereafter revised projection for the period 2007-08 to 2008-09 including the Capital Goods imported was approved by the Development Commissioner, approves the projections for the block period 2004-05 to 2008-09. Hence any import made during 2006-07 is regularized.'

5. In view of the fact that the Licensing Authority has acknowledged and approved the imports made by the Appellant, holding that the same were within the permissible limit, we are of the view that the Customs Department cannot further agitate or raise the issue for confirmation of demand in respect of the imports already made and approved by the proper authority i.e., the Development Commissioner.

6. In view of the above, we do not find any merits in the impugned order, insofar as it has confirmed the adjudged demands on the Appellant. Therefore, by setting aside the impugned order, the appeal is allowed in favour of the Appellant.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha/kpw
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