CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Customs Appeal No. 89829 Of 2013

(Arising out of Order-in-Original No. PUN-EXCUS-003-COM-13-14 dated 26.08.2013 passed by Commissioner of Central Excise, Pune -III)

Commissioner of Customs, Excise And Service Tax, Pune-III .....**Appellant**
ICE House, 41-A, Sasson Road, Opposite Wadia College, Pune-411 001.

VERSUS

Kumar Housing Corporation Ltd .....**Respondent**
10th Floor, Kumar Business Centre, CTS No. 29, Bund Garden Road, Pune-411 001.

Appearance:

Shri Deepak Sharma, Authorized Representative for the Appellant
Shri Sachin Chitnis, Advocate for the Respondent

CORAM:

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

FINAL ORDER NO. A/87217/2023

Date of Hearing: 11.12.2023
Date of Decision: 11.12.2023

PER : S. K. MOHANTY

Briefly stated, the facts of the case are that the respondent herein M/s Kumar Housing Corporation Ltd. were granted permission by the Inter-Ministerial Standing Committee (IMSC) as 100% EOU in the Electronic Hardware Technology Park (EHTP) and Software Technology Park (STP) units for setting up of infrastructural facilities for the STP units at the 'Cerebrum', Kumar City, Kalyan Nagar, Pune. The respondents were also granted license for private customs bonded warehouse under Section 58 of the Customs Act, 1962. As the infrastructural service provider (ISP), the respondents were allowed to import specific capital goods as approved by IMSC, under the provisions of Foreign Trade Policy, without payment of Customs duty. In the present case, the respondents had imported certain capital goods and availed the benefit of duty exemption provided under Notification No. 52/2003-Customs dated 31.03.2003. Availement of such duty exemption was objected to by the department. The Show Cause Notice (SCN) dated 18.02.2011 issued in this regard was adjudicated vide Order-in-Original No. 01/P-III/COMMR/2012-13 dated 29.06.2012 by the learned Commissioner of Central Excise, Pune-III Commissionerate, Pune. In the said order, the original authority has denied the benefit of provided under notification No.52/2003-Cus. dated 31.03.2003 and 153/93-Cus. dated 13.08.1993 on the ground that such benefit was not available to the respondent in terms of the permission granted by the IMSC. Besides, the said order had also confirmed the customs duty liability along with interest and also imposed penalties on the respondents under various provisions contained in the Act of 1962.

1.2 Feeling aggrieved with the order dated 29.06.2012, the respondent herein had filed appeals before the Tribunal, which was disposed of vide Order No. S/57 to 60/13/EB/C-II & Appeal No. A/17 to 20/13/EB/C-II dated 21.11.2012, by way of remand to the original authority. In the said order, the Tribunal has held that the adjudication order has not recorded any finding with regard to the demand of central excise duty, though the same was a part of confirmed demand in the adjudication order. Accordingly, the matter was remanded by the Tribunal for *de novo* adjudication.

1.3 Pursuant to the remand direction of the Tribunal as contained in the Order dated 21.11.2012, the original authority took up *de novo* adjudication proceedings and passed the Order-in-Original No. PUN-EXCUS-003-COM-010-13-14 dated 26.08.2013. In the said order, the benefits provided under notifications dated 31.03.2003 (supra) and 13.08.1993 (supra) were denied to the respondent and consequently, duty exemption of Central Excise as well as Customs duty availed by the appellant was denied and order for their recovery along with interest. Besides, the said order dated 26.08.2013 had imposed penalties on the appellants under Section 112(a) ibid and Section 117 ibid.

1.4 The order dated 26.08.2013 (supra) passed by the learned Commissioner of Central Excise & Service Tax, Pune were assailed by the respondents herein by way of filing appeal before the Tribunal. The Appeal being Nos. E/89504/13 and C/89505, 89506 & 89507/2013 filed by the respondents were disposed of by the Tribunal vide Order No. A/352-355/14/EB/C-II dated 01.04.2014 again by way of remand for determination of the quantum of duty, which the respondent is liable to pay at the time of de-bonding, by taking into account their entitlement to depreciation on the capital goods sought to be de-bonded in terms of the rates prescribed under Notification No. 52/2003-Cus. and No.22/2003-CE from the date of installation/putting to use of the capital goods, till the date of debonding.

1.5 Feeling aggrieved with the order dated 01.04.2014 (supra), passed by the Tribunal, the department had filed appeal being No. 133 of 2016 before the Hon'ble Bombay High Court. Vide Judgement dated 22.01.2018, the appeal filed by the Revenue was dismissed by the Hon'ble High Court.

2. In the present appeal, Revenue has assailed the order dated 26.08.2013 (for short as referred as 'impugned order') before the Tribunal, contending that the capital goods in question are liable for seizure and confiscation and accordingly, prayed for an order from this Tribunal for the same and for imposition of redemption fine, in lieu of seizure of impugned capital goods.

3. Heard both sides and perused the case records.

4. On examination of the case records, we find that the order dated 26.08.2013 passed by the Original authority was assailed by the respondent before the Tribunal and the Appeal filed in this regard was disposed of by the Tribunal vide Order dated 01.04.2014 by remanding the matter to the original authority for passing of the de novo adjudication order. Further, the said order dated 01.04.2014 was also

upheld by the Hon'ble Bombay High Court vide judgement dated 22.01.2018, pursuant to the appeal filed by the Revenue.

5. From the sequence of events, explained herein above, it transpires that the original order dated 26.08.2013 was merged with the order dated 01.04.2014 passed by the Tribunal and the said order of the Tribunal was also upheld by the Hon'ble Bombay High Court vide judgement dated 22.01.2018. Thus, under the circumstances of the case, the *doctrine of merger* applies to the case in hand and since the order dated 26.08.2013 is no more in existence, in our considered view, the appeal filed by Revenue against such original order cannot be sustained for judicial scrutiny. Further, the prayer made by Revenue in this appeal cannot also be sustained inasmuch as the order dated 26.08.2013 was passed by the learned Commissioner of Central Excise, pursuant to the limited remand directions made in the Order dated 29.06.2012 by the Tribunal. Furthermore, the subsequent order dated 01.04.2014 passed by the Tribunal in response to the appeal filed against the original order 26.08.2013 was entirely under different context or set of facts and there is no whisper to the subject matter of confiscation of the capital goods and imposition of redemption fine thereon, which is the subject matter of present appeal.

6. In view of the above, we do not find any merits in the appeal filed by Revenue and therefore, the same is dismissed.

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

(S.K. Mohanty)
Member(Judicial)

(M.M. Parthiban)
Member (Technical)

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