IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CUSAP-6-2006
Decided on : 08.01.2015

Commissioner of Customs, Amritsar ..... Appellant

VERSUS

M/s Ragini Steels (P) Ltd., Delhi ..... Respondent

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE B. S. WALIA

Present: Mr.Sunish Bindlish, Advocate, for the appellant.

Mr.Sandeep Wadhawan, Advocate, for the respondent.

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RAJIVE BHALLA, J. (ORAL)

By way of this order, we shall decide CUSAP-6-2006, CUSAP-7-2006, CUSAP-8-2006, CUSAP-9-2006, CUSAP-10-2006, CUSAP-11-2006 and CUSAP-12-2006 as they arise from a common order in original and from a common order passed by the Customs Excise & Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as the CESTAT).

Counsel for the revenue submits that the CESTAT having accepted findings recorded in the order in original that the respondents intentionally mis-declared goods, has arbitrarily and without assigning any reason, allowed redemption of goods on payment of a paltry amount of redemption fine. Counsel for the revenue further submits that while considering penalty, the CESTAT has reduced the penalty without assigning any reason. The order reducing penalty is contrary to the mandatory provisions of Sections 113 and 114 of the Customs Act, 1962 when read alongwith Section 11 of the Foreign Trade (Development and Regulation) Act, 1992.

Counsel for the respondents submits that the issue of allowing redemption, has been rendered infructuous as the respondents did not redeem the goods within the time prescribed by the CESTAT. As regards penalty, counsel for the respondents submits that as discretion exercised by the CESTAT is neither perverse nor arbitrary and as Section 114 of the Customs Act, 1962 empowers the CESTAT to assesss penalty, the penalty so assessed, may be affirmed.

We have heard counsel for the parties and perused the impugned order.

A large number of consignments, sought to be exported by the respondents, were apprehended by customs authorities. After a detailed scientific examination of the goods, it was found that the goods did not answer to the declared description. The adjudicating authority consequently ordered confiscation of the goods and imposed penalty of Rs. 1.75 crores by apportioning different amounts of penalties to different respondents.

Aggrieved by this order, the respondents filed separate appeals. The CESTAT vide common order dated 15.04.2005, affirmed the findings regarding mis-declaration of goods but granted relief to the respondents by allowing redemption subject to payment of redemption fine within eight weeks from its order and drastically reduced the penalty.

Admittedly, the respondents have chosen not to redeem the goods, thereby leading to revival of the order of confiscation and rendering challenge to the redemption allowed by the CESTAT infructuous.

We are, thus, left with challenge to that part of the impugned order vide which penalty has been drastically reduced. The CESTAT reduced penalty by holding as follows: -

> "4......All the material brought on record by revenue clearly establish the fact that both Vinod Garg and Narsi Das have, by acts of mis-declaring the description of goods, value and quantity have rendered the goods liable to confiscation making them liable to penalty under the provisions of Section 114 of the Customs Act. Similarly the appellant firm/companies are liable to penalty for these acts of commission under Section 114 of the Customs Act. We, however, agree with the learned Advocate that the penalty imposed is on the higher side. The interest of justice will be met, if the penalties are imposed as under: -

(i)	SRG International	Rs. 2 lakhs
(ii)	SRG Forge Overseas Ltd.	Rs. 1 lakh
(iii)	Ragini Steels Pvt. Ltd.	Rs. 2 lakhs
(iv)	Garg Forging & Castings Ltd.	Rs. 2 lakhs
(v)	Goodwill Impex	Rs. 2 lakhs
(vi)	Shri Vinod Kumar Garg	Rs. 2 lakhs
(vii)	Shri Narsi Das	Rs. 1 lakh"

A perusal of the aforesaid extract reveals that the CESTAT has affirmed intentional mis-declaration of goods but thereafter reduced penalty by merely recording that the penalty is on the higher side. The order, in our considered opinion, is non-speaking and as a consequence, arbitrary.

A quasi-judicial order, whatever be its nature, is required to assign reasons, preceded by a perceptible process of reasoning. The CESTAT has assigned a reason for reducing penalty namely that the penalty imposed is on the higher side but while doing so, has not supported its findings by a process of reasoning much less a perceptible process of reasoning. The reduction of penalty without disclosing as to how the penalty is on a higher side, must necessarily be held to be arbitrary. At this stage, it would be appropriate, to point out that penalty has to be calculated under Section 114 of the Customs Act, 1962 and the respondents may be liable either under Section 114(2) or Section 114(3) of the Customs Act, 1962 depending on the date of confiscation and the nature of the provisions in force on the relevant date. The maximum possible penalty was Rs.15.30 crores but the adjudicating authority imposed a total penalty of Rs.1.75 crores. The CESTAT has reduced penalty to Rs.12 lacs without assigning any clear and cogent reasons much less reference to any relevant facts or law.

Consequently, we set aside order dated 15.04.2005, passed by the CESTAT insofar as it relates to reduction of penalty and restore the matter to the CESTAT for adjudication afresh and in accordance with law. We may not be misunderstood to have held that the CESTAT is not empowered to reduce penalty. The CESTAT may, if deemed appropriate, maintain its earlier order but only after assigning reasons.

Parties are directed to appear before the Customs Excise & Service Tax Appellate Tribunal, New Delhi, on 11.02.2015. The appeals be decided within two months of parties putting in appearance.

[RAJIVE BHALLA]
JUDGE

08.01.2015
Shamsher S.Sabharwal

[B. S. WALIA]
JUDGE