IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Customs Appeal No. 42 of 2014 (O&M)
Date of decision: 30.8.2016

M/s BE Office Automation Products (P) Limited
.. Appellant

v.
Commissioner of Customs and Central Excise
.. Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Deepak Gupta, Advocate for the appellant.
Mr. Anshuman Chopra, Advocate for the respondent.

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Rajesh Bindal J.

1. The assessee has filed the present appeal raising the following substantial questions of law arising out of the order dated 14.3.2014, passed by Customs, Excise & Service Tax Appellate Tribunal, New Delhi (for short, 'the Tribunal') in Custom Appeal No. C/732/2008-Cus (DB):

"(a) Whether imposition of fine and penalty is justified when goods in question were not restricted during the period in question ?

(b) Whether impugned order passed by Ld. Tribunal is perverse and contrary to its earlier orders ?

(c) Whether Ld. Tribunal is justified to enhance fine and penalty in the appeal of the appellant ?

(d) Whether amount of fine and penalty upheld by Ld. Tribunal is justified when in identical cases amount has been substantially reduced ?

(e) Whether imposition of fine and penalty is justified in the present case ?"

2. Learned counsel for the appellant submitted that vide order dated 16.6.2008, Joint Commissioner (Customs) levied redemption fine of ₹ 4,00,000/- under Section 125 of the Customs Act, 1962 (for short, 'the Act') and penalty of ₹ 8,00,000/- under Section 112(a) of the Act. Aggrieved against the said order, the appellant preferred appeal before the Commissioner of Central Excise (Appeals), who vide order dated 18.8.2008, reduced redemption fine to ₹ 2,00,000/- and penalty to ₹ 1,20,000/-. The appellant preferred further appeal before the Tribunal. The department also filed appeal bearing Custom Appeal No. C/719/2008-CUS (DB). The Tribunal, after hearing the parties, dismissed the appeal filed by the department. However, in the appeal filed by the appellant, the amount of redemption fine was increased from ₹ 2,00,000/- to ₹ 3,00,000/- and penalty from ₹ 1,20,000/- to ₹ 3,00,000/-, which was totally without jurisdiction, as in the appeal filed by the appellant, the amount of penalty as determined by the first appellate authority could not have been increased as at the most the appeal could have been dismissed, especially when the appeal filed by the department had been dismissed.

3. On the other hand, learned counsel for the revenue submitted that good and valid reasons have been assigned by the Tribunal while increasing redemption fine and the penalty. The order does not call for any

interference by this court. He could not dispute the fact that the appeal filed by the department was dismissed.

4. Heard learned counsel for the parties and perused the paper book.

5. In our opinion, the substantial question of law, which arises for consideration by this court in the present appeal, is:

> Whether redemption fine and penalty, as determined by the first appellate authority, can be increased further by the Tribunal in the appeal filed by the assessee, especially when the appeal filed by the department against the same order passed by the first appellate authority had been dismissed ?

6. The facts of the case have already been noticed above. The only issue which requires consideration is as to whether the order passed by the Tribunal increasing the amount of redemption fine and penalty in the appeal filed by the assessee is justifiable in the circumstances, when the appeal filed by the revenue against the same order passed by the first appellate authority, reducing the penalty as imposed by the Joint Commissioner (Customs) had been dismissed by the Tribunal. It is only in the appeal filed by the department that the amount of penalty could be increased and for that the appeal filed by the assessee had to be dismissed. But in the case in hand, the facts are otherwise. The appeal filed by the revenue was specifically dismissed. In the appeal filed by the assessee, the order passed by the first appellate authority was set aside and the quantum of redemption fine and penalty was increased. That course was not possible in the appeal filed by the assessee, especially when the appeal filed by the department had been dismissed.

7. For the reasons mentioned above, the appeal is allowed. The substantial question of law, as framed in para No. 5 above, is answered in favour of the assessee and against the revenue. As a consequence, the order passed by the Tribunal is set aside and that of the first appellate authority is restored.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

30.8.2016
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No