IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL NO. 18 OF 2016
WITH
NOTICE OF MOTION NO. 246 OF 2016
IN
CUSTOMS APPEAL NO. 18 OF 2016

The Commissioner of Customs NS-I … Appellant.
V/s.
Lilaram Gobindram … Respondent.

Mr. Pradeep S. Jetly, Advocate for the Appellant.
Mr. Anil Balani, Advocate for Respondent.

CORAM : ANOOP V. MOHTA AND
SMT. ANUJA PRABHUDESSAI, JJ.
DATE : 31st JULY, 2017

ORAL JUDGMENT (PER ANOOP V. MOHTA, J.):

This is an appeal under Section 130 of the Customs Act, 1962 (for short "the Act")referred by the Appellant/Revenue Department against order dated 28th April, 2015 passed by the Customs Excise & Service Tax Appellate Tribunal, West Zonal bench at Mumbai (CESTAT).

2 The proposed question of law is as under:

> "whether the CESTAT is right in law in allowing the benefit claimed by the Respondent?"

3 Heard the counsel for the parties finally.

4 The CESTAT, after considering documents and the keeping in mind, the requirement of certificate of origin so contemplated under notification dated 13th August, 2008 referring to Customs Tariff (Determination of Origin of Products under the Duty Free Tariff Preference Scheme for Least Developed Countries) Rules, 2008 has recorded:

> "9. It can be seen from the above reproduced certificate of origin, the goods have been consigned from union of Comoros to the importer herein. It can also be noted that the said certificate of origin does mention the invoice number issued by the exporter. We perused the said invoice annexed at page No. 54 of the appeal memoranda and note that and the said invoice is the same invoice which is mentioned in the certificate of origin as reproduced hereinabove. Having convinced ourselves that the certificate of origin does indicate that the goods were exported from one of the countries mentioned in the appendix to Notification No.96/2008 as amended, we now address to the lapses pointed out by the lower authorities."

> "10. The main contention of the Departmental representative as also of the lower authorities is that the said

certificate of origin is not signed at point No. 11 by the exporter. As can be seen from the above reproduced certificate of origin, the said certificate has been signed by the "African Commodities House Ltd." It is to be seen that the procedure for presentation of certificate of origin under the duty free tariff difference scheme for the least developed countries at Annexure-B lays down the procedure which we reproduce.

> *"The certificate of origin shall be issued by the relevant issuing authority of the exporting country at the time of exportation, or within 3 working days from the date of shipment, whenever the products to be exported can be considered originating in that country within the meaning of the rules of origin for the Scheme.*
>
> *In exceptional cases where a certificate of origin has not been issued at the time of exportation or within 3 working days from the date of shipment due to involuntary errors or omissions or other valid causes, the certificate of origin may be issued retroactively but no longer than 45 days from the date of shipment, bearing the word "Issued Retroactively".*
>
> *The Following time limit for the presentation of the certificate be observed:*
>
> *a) The validity of the certificate of origin shall be twelve months from the date of its issuance.*
> *b) Certificate of origin must be submitted to the Customs Authority within the validity period.*
> *Where the certificate of origin is submitted after the expiration of the validity of the certificate of origin, such certificate is still to be accepted when failure to observe the time limit results from force majeure or other valid reasons beyond the control of the exporter.*

> *In all cases, the relevant Customs Authority in India may accept such certificate of origin provided that the products have been imported before the expiry of the validity of the certificate of origin.*
>
> *The discovery of minor discrepancies between the statements made in the certificate of origin and those made in the documents submitted to the Customs Authority of India for the purpose of carrying out the formalities for clearance of import, the products shall not ipso facto invalidate the certificate of origin, if it does in fact correspond to the said products".*

"11. It can be seen from the above reproduced procedure that authorities have been given instructions, which when read holistically, would mean that minor discrepancies would not ipso facto invalidate the certificate of origin if the same in fact corresponds to the product imported. It can be seen that the certificate of origin needs to be issued by the government authorities designated by the government of exporting beneficiary country. In the case in hand, as already held by us the certificate of origin has been insured by "African Commodities House Ltd." seems to us to be an authority approved by the union of Comoros. This our view is fortified from the fact that identical goods imported at other various ICDs were certified by the same issuing authority and was accepted by the revenue authorities and not disputed the issuing authorities credentials".

“12. We find strong force in the contentions raised by the learner consultant that the ratio of the judgment of Hon'ble Supreme Court in the case of Baharat diagnostic Center will apply in this case. With respect we reproduce the ratio as is in paragraph No. 5.

> *“With regard to the interpretation and construction of a notification granting exemption, it is settled that at the first instance, strict interpretation would apply, that is to say in the case of ascertaining its applicability. Thereafter, the Court may adopt the liberal approach within the particulars of the said notification. The case of Gammon (I) Ltd. V. Commr. Of Customs, (2011) 12 SCC 499 = 2011 (269) E.L.T. 289 (S.C.), reiterated the well-settled position of law that a provision providing for an exemption has to be construed strictly. The following cases would, further make the position of law clear on this point.”*

“13. In view of the foregoing and in the peculiar facts and circumstances of this case, we set aside the impugned order with a direction to the lower authorities to assess the bill of entry extending the benefit of Notification No. 96/2008, as amended and allow the clearances of the goods imported.”

5 After hearing the parties and after going through the certificate and the related documents, the rival contention so raised, in the present facts and circumstances, we are of the view that the CESTAT has considered the merits of the

matter after the verification of the documents and arrived the correct conclusion and further directing to allow the clearances of the goods imported is well within the power and based upon the record. There is no perversity and/or illegality in the order. The CESTAT has power to consider all the documents and record to give final finding on facts.

6 Therefore, taking overall view of the matter and keeping in mind the scope and object of Appeal under Section 130 of the Customs Act 1962, there is no case is made out to interfere with the findings (***Chandna Impex Pvt. Ltd. Vs. Commr. of Customs)***[1]. There is no question of law involved. The Appeal and the notice of motion are disposed of accordingly. No cost.

(ANUJA PRABHUDESSAI, J.) **(ANOOP V. MOHTA, J.)**

1 2011 (7) SCC 289