IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MR. JUSTICE N. SATISH KUMAR

C.M.A.No. 2586 of 2017 and
C.M.P.No.14099 of 2017

M/s.Medopharm
Mohan Mansion
Thiru-vi-ka Road, Chennai - 600 006
By its Partner Sardarmul Chordia.

...Appellant/Appellant

Vs.

1. The Deputy Commissioner of Customs(Gr 7)
Customs House No.60,
Rajaji Salai,
Chennai - 600 001

2. The Commissioner of Customs,
Customs House No.60, Rajaji Salai,
Chennai - 600 001 ...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 130 of the Customs Act, 1962 against the final order No. 40242 of 2017 dated 07.02.2017 in Appeal No. C/237/2007-DB passed by Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For Appellant : Mr.N.Viswanathan

For Respondents : Mr.A.P.Srinivas
Standing Counsel

J U D G M E N T

(Delivered by T.S.SIVAGNANAM.J.,)

This appeal by the assessee has been filed under Section 130 of the Customs Act, 1962 (hereinafter referred to as, 'Act') challenging the final order passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai (Tribunal) dated 07.02.2017.

2. The appeal was admitted vide order dated 10.10.2017 on the following substantial questions of law:-

"1. Whether the Tribunal was correct in

holding that Not.No.56/2003-Cus was not substitute of Not.No.43/2002-Cus when the claim made by the appellant itself was that they are otherwise entitled to the benefit of Not.No.43/2002 in respect of the imports made by them, notwithstanding the fact of existence of Not.No.56/2003, which notification was claimed by the appellant only as superfluous and not an substitute of Not.No.43/2002?

2. Whether the Tribunal, while accepting para 4.1.1 of the FTP to cover all advance licences, was correct in treating licenses granted for annual requirement under para 4.1.7A as a separate license for the reason that its objective is specific to deal with annual requirement, so as to treat it differently from the license contemplated under para 4.1.1 of FTP, overlooking the fact that all licenses admittedly originates only from para 4.1.1 of FTP?

3. Whether the Tribunal was correct in failing to consider Office Memorandum dated 02.09.2003 of Ministry of Commerce addressed to Ministry of Finance, categorically opining that advance authorisation for annual requirement is issued based on the annual performance of the preceeding year and that the FTP does not differentiate on the duty component for exemption, whether it is for physical exports, deemed exports, intermediate supplies or for annual requirement and the basic aim for advance authorisation for annual requirement is to reduce the interface of exporters with regional authorities issuing the authorisations to allow flexibility to meet export obligation, vis-a-vis production scheduling?”

3. Heard Mr.N.Viswanathan, learned counsel appearing for the appellant/assessee and Mr.A.P.Srinivas, learned Standing Counsel for the respondent/Revenue.

4. The short issue which falls for consideration is whether the appellant/assessee is entitled for exemption from the whole of the duty of customs, additional duty, safeguard duty and anti-dumping duty.

5. The undisputed facts are that the appellant availed the benefits conferred on physical exporters as per the Export Import Policy 1997 - 2002. In paragraph 4.1.1 of the Policy, an Advance Licence is issued to allow duty free import of inputs

which are physically incorporated in the export product. In Sub-para (a) of paragraph 4.1.1 which deals with Physical Exports - Advance Licence may be issued for physical exports to a manufacturer exporter or merchant exporter tied to supporting manufacturer(s) for the import of inputs required for the export product. Paragraph 4.1.2 deals with advance licence issued for duty free import of inputs, as defined in paragraph 4.1.1 subject to actual user condition. Such licences are exempt from payment of basic customs duty, additional customs duty, anti-dumping duty and safeguard duty, if any. Even in paragraph 4.1.2, an exception has been carved out in respect of advance licence for deemed export and it states that such deemed exports shall be exempted from basic customs duty and additional customs duty only. Thus, in case of deemed export, there is no exemption from anti-dumping duty and safeguard duty, if any.

6. Paragraph 4.1.7A states that Advance Licence can also be issued on the basis of annual requirement for physical exports. It is not in dispute that the assessee applied for a licence under the category mentioned in paragraph 4.1.7A. This is seen from Advance Licence for Annual Requirements dated 06.05.2003. According to the assessee, they have fulfilled the export obligation. However, such redemption letter was given by the Joint Directorate General of Foreign Trade, Chennai only on 19.10.2010. However, this is not very germane for the purpose of deciding the substantial questions of law framed in this appeal.

7. The assessee's case is that notification No. 43/2002 - Cus dated 19.04.2002 speaks of exemption to import against advance licence issued under duty exemption/remission scheme. This notification was issued in exercise of the powers conferred on the Central Government under Section 25(1) of the Act and the Central Government exempted materials imported into India against Advance Licence issued in terms of paras (a) and (b) of paragraph 4.1.1 of the Export and Import Policy from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 and from the whole of the additional duty, safeguard duty and anti-dumping duty leviable thereon respectively under Sections 3,8 and 9A of the Customs Tariff Act subject to the conditions stipulated therein.

8. The Central Government issued another notification bearing Notification No. 56/2003- Cus dated 01.04.2003. This notification exempts materials imported into India against an Advance License for Annual Requirement with Actual User Condition in terms of paragraph 4.1.7A of the Export and Import Policy from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff

Act, and from the whole of the additional duty leviable thereon under Section 3 of the Customs Tariff Act, subject to the following conditions mentioned in the Notification. As noticed above, the assessee secured licence under the category of 'Advance licence for annual requirement'. The assessee's claim is that they are entitled to the benefit of the notification No.43/2002-Cus dated 19.04.2002 and they are exempt from levy of anti-dumping duty also including duty on customs and additional duty leviable thereon. This interpretation is given by the assessee by stating that the power to issue advance licence is traceable to only paragraph 4.1.1 of the Export and Import Policy and there is no separate licence issuable under paragraph 4.1.7A.

9. The assesse's argument stems from a communication sent by the Deputy Director General of Foreign Trade to the Director (Drawback), Department of Revenue, Ministry of Finance. In the said communication dated 02.09.2008, it has been stated that Advance Authorization for Annual requirement is an Advance Authorization issued on the basis of Annual performance of the preceding year. The Foreign Trade Policy does not differentiate on the duty component for exemption whether it is against Advance Authorization for Physical exports, Deemed exports, Intermediate supplies or for Annual Requirement. Further, it has been stated that the basic aim of Advance Authorization for Annual Requirement is to reduce the interface of exporters with Regional Authorities issuing the Authorizations to allow flexibility to meet export applications vis-a-vis production scheduling. It was further stated that though the customs notification for advanced authorization allows exemption from basic customs duty, additional customs duty, anti-dumping duty etc., customs notification No.56/2007 dated 01.04.2003 as amended for Advance Authorization for Annual Requirement needs amendment for allowing exemption from Anti-Duping Duty as well, in line with Foreign Trade Policy Provisions. With the above said observations, the Deputy Director General of Foreign Trade requested the Department of Revenue to consider appropriate amendment in the customs Notification No. 56/2007 about exemption of Anti-dumping duty for Advance Authorization for Annual Requirement also.

10. It is not in dispute that pursuant to the said communication dated 02.09.2008, the Ministry of Finance has not amended the Notification No.56/2007 and the same stands as such. In the light of the said position, if the imports have been made against the advance licence for annual requirement in terms of paragraph 4.1.7A of the Export and Import Policy, the importer is exempt from the whole of the duty of Customs leviable thereon as specified in the First Schedule to the Customs Tariff Act and from the whole of the additional duty leviable thereon under

Section 3 of the Customs Tariff Act only and the said notification does not exempt the importer from the levy of anti-dumping duty. Further more, Notification No. 56/2003 was issued on 04.01.2003 and it is not an amendment to Notification No. 43/2002 which deals with a separate category of imports namely against advance licence issued in terms of sub-paras (a) and (b) of paragraph 4.1.1 of the Export and Import Policy. Therefore, in our considered view, the Tribunal was fully justified in stating that the object of both notifications is different and as long as there is no amendment to the notification No. 56/2003 dated 01.04.2003, the assessee is not eligible for exemption from the levy of anti-dumping duty.

11. Therefore, we find that there is no error in the order passed by the Tribunal and the manner in which they have interpreted both the notifications. As pointed out earlier, the communication from the Deputy Director General of Foreign Trade to the Department of Revenue, Ministry of Finance has remained as such and the Government of India has not amended the exemption notification. The settled legal principle is that, such exemption notifications are to be interpreted strictly and recently, the Hon'ble Apex Court has held that the interpretation of an exemption notification should lean in favour of the Revenue. Therefore, we do not agree with the contention advanced by the learned counsel appearing for the assessee that the licences issued under paragraph 4.1.7A is in fact the licence in paragraph 4.1.1. This submission is based on the interpretation given by the Deputy Director General of Foreign Trade. In any event, we cannot substitute words in an exemption notification, more particularly, when the exemption notification No.56/2003 specifically states that it pertains to advance licence for annual requirement with actual user addition issued in terms of paragraph 4.1.7A of the Export and Import Policy.

12. Thus, for the above reasons, the assesse has not made out any case for interference. Accordingly, the appeal stands dismissed and the substantial questions of law are answered against the assessee. No Costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

svki/ssm

To

1. The Deputy Commissioner of Customs
   Customs House No.60,
   Rajaji Salai,
   Chennai - 600 001

2. The Commissioner of Customs,
   Customs House No.60, Rajaji Salai,
   Chennai - 600 001.

3. Customs, Excise and Service Tax Appellate Tribunal,
   Chennai.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No. 82000
+1cc to Mr.N.Viswanathan, Advocate, S.R.No. 82684

C.M.A. No. 2586 of 2017

SR(CO)
GN(08/01/2019)