HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

C.E.A. No.175 of 2018

JUDGMENT: {Per Hon'ble Sri Justice Ramesh Ranganathan}

This appeal, under Section 130-A of the Customs Act, 1962 (for short "the Act"), is preferred against the order passed by the Customs, Excise and Service Tax Appellate Tribunal, Regional Bench, Hyderabad in Appeal No.C/30349/2017 dated 05.07.2018. The appellant herein is the 1st respondent in the appeal before the Tribunal. The respondent herein preferred an appeal against the order passed by the Commissioner (Appeals) dated 15.02.2017 upholding the order-in-Original passed by the Additional Commissioner of Customs, Visakhapatnam dated 09.09.2016.

The respondent herein imported steel wires which, at the time of examination, were found not to conform to the standards laid down under the Steel and Steel Products (Quality Control) Order, 2015 issued under the Bureau of Indian Standards Act. A bill of entry was facilitated by the Risk Management System of Customs and, on the goods sought to be imported being inspected, the officers found that the products did not meet the prescribed standards. The Additional Commissioner of Customs directed confiscation of the goods, i.e steel wires imported by the appellant, under Section 111(d) of the Act. He also imposed penalty of Rs.1,00,000/- on the respondent under Section 112(a) of the Act. Aggrieved thereby, the respondent herein preferred an appeal to the Commissioner (Appeals) who, by his order dated 19.07.2016, remanded the matter to the Additional Commissioner. The matter was re-adjudicated by the Additional Commissioner who, by his order dated 09.09.2016, re-confirmed the confiscation of the goods under Section 111(d) of the Act and gave the importer an option to redeem the goods only for the purpose of re-export on payment of redemption fine of Rs.2,00,000/- under Section 125 of the Act. In addition, a penalty of Rs.1,00,000/- was imposed on the importer under Section 112(a) of the Act.

Aggrieved thereby, the respondent herein again the carried the matter in appeal to the Commissioner (Appeals) who, by his order dated 15.02.2017, rejected the appeal. Against the order of the Commissioner (Appeals), the respondent herein preferred an appeal to the Tribunal which passed the impugned order. The Tribunal held that the scope of Section 125 of the Act was limited; it was not open to the adjudicating authority or the Tribunal (which are creatures of the statute) to stretch, modify or restrict the scope of the Section; they were bound by the provisions; not only Section 125 of the Act, but no other provision in the Act gave any officer the power to compel anyone to import or export or re-export; Section 125 of the Act did not give the adjudicating authority a right to give a conditional redemption saying “you can redeem only if you agree to re-export”; in case of prohibited goods, the adjudicating authority has only two options i.e (a) to allow redemption on payment of fine; or (b) to not allow redemption; and the condition in the order-in-Original, that the goods should be re-exported after redemption, was liable to be set aside. The appeal was allowed to the extent the condition in the order-in-Original, that the goods should be re-exported after redemption, was set aside.

Sri Y.N.Vivekananda, learned Senior Standing Counsel for Central Excise, would vehemently contend that such a power must be held to inhere in the adjudicating authority under Section 125 of the Act. We must express our inability to agree.

We are of the view that the Tribunal was justified in holding that, in the absence of a specific provision conferring power on the adjudicating authority to direct re-export of the goods as a condition precedent for grant of redemption on payment of fine, no such power was available to be exercised by the authorities concerned. It is only if power is conferred on the authority under the Act or the Rules, can it be exercised in terms thereof; and, in the absence of any specific provision in the Act or the Rules which confer on the adjudicating authority the power to direct the importer to re-export the goods, we find no error in the order of the Tribunal in setting aside the order-in-Original to this limited extent alone, much less a substantial question of law warranting interference under Section 130-A of the Act.

Sri Y.N.Vivekananda, learned Senior Standing Counsel, would submit that, since the adjudicating authority had directed redemption on payment of fine only on the condition of re-export, the order of the Tribunal, setting aside the order of the adjudicating authority to the extent he directed re-export, would enable the adjudicating authority to pass an order afresh, as the Tribunal has, in the order under appeal, specifically held that the adjudicating authority has the power either to allow redemption on payment of fine or not to allow redemption at all; and, since the adjudicating authority had exercised the power of redemption on payment of fine only on the condition of re-export, the order of the Tribunal, setting aside order of the adjudicating authority, would enable the adjudicating authority to re-consider whether or not to allow import of the goods on redemption by payment of fine.

It is wholly unnecessary for us to express any opinion on this submission, as the Tribunal has only faulted the order-in-Original to the extent the adjudicating authority had directed re-export of the goods. The question whether the adjudicating authority has the power to pass an order afresh, rejecting grant of redemption, was neither in issue nor was it examined by the Tribunal. It would be wholly inappropriate for this Court, in proceedings under Section 130-A of the Act, to express any opinion in this regard. Suffice it to make it clear that neither the order now passed by us nor the order passed by the Tribunal shall disable the adjudicating authority from exercising his powers in accordance with law.

Subject to the aforesaid observations, the CEA is dismissed. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

20th September, 2018
Note: Issue C.C in one week.
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Date: 20.09.2018

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