IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2019

CORAM

THE HONOURABLE DR. JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

CMA.No.2897/2012

M/s.Raj Television Network Limited
No.32, Poes Road, 2nd Street
Teynampet, Chennai 600 018. .. Appellant/Appellant

Vs

1.Customs, Excise and Service Tax
Appellate Tribunal, South Zonal Bench
Shastri Bhawan Annexe, 1st Floor
No.26, Haddows Road
Chennai 600 006.

2.Commissioner of Customs [Airport&ACC]
Air Cargo Complex, Meenambakkam
Chennai 600 027. .. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under section 130A of the Customs Act, 1962, against order No.702/2007 dated 07.06.2007 on the file of Customs, Excise & Service Tax Appellate Tribunal, Chennai.

For Appellant : Mr.S.Murugappan
For Respondents : Mr.V.Sundareswaran CGSC

JUDGMENT

[Judgment of the Court was delivered by VINEET KOTHARI, J.,]

Raj Television Network Limited has filed this appeal under section 130A of the Customs Act, 1962, aggrieved by the order of the learned Tribunal dated 07.06.2007, by which the learned Tribunal had dealt with the points raised by the appellant herein in a comprehensive manner and decided the appeal with the following observations:-

''..

8.2 It appears from the record of evidence in this case that this equipment, after its clearance, was mounted on a vehicle and put to use as mobile unit for the intended purpose by the appellants. The company's Chartered Accountant's certificate, produced by counsel, shows that, out of use of the imported equipments, they could achieve substantial exports [to the extent of US $ 783423 upto 17.07.2006] under the EPCG Scheme. However, the requisite installation certificate was not produced within the period prescribed under Notification No.55/2003-Cus. or thereafter. It has been argued by learned counsel that it was not necessary to produce installation certificate after each import and that such a certificate was required to be produced only after completion of imports under the EPCG licences. This argument cannot be accepted for the reason that each EPCG licence had prescribed a period of 24 months for completing imports thereunder and the licensing authority was never approached for extension of the period with the result that no further imports were possible after the expiry of the above period. On the facts of this case, it is not necessary to embark on interpretation of the expression ''completion of imports'' used in the Notification. As rightly pointed out by learned JDR, the period allowed for imports under the EPCG licences dated 30.05.2003 and 18.07.2003 had expired on 29.05.2005 and 17.07.2005 respectively. The company was not entitled to make any import under the EPCG licences beyond the above period and therefore, their plea that time is available for importing the remaining items and that installation certificate is required to be produced only after completion of such imports cannot be accepted. Admittedly, the appellants have not produced installation certificate in respect of DSNG equipment. Therefore, we have to uphold the Commissioner's decision to confiscate the DSNG equipment under section 111[o] also. However, learned Commissioner appears to have overlooked the requirements of Section 125 of the Customs Act, whereunder an option for redeeming the goods was available to the importer. He ought not to have ordered absolute confiscation and should have allowed the party to redeem the goods on payment of a reasonable fine besides duty. In the facts and circumstances of this case, we are of the view that 15% of the value of the goods would be a reasonable fine for redemption thereof and this works out to Rs.19,00,000/- [Rupees Nineteen lakhs only]. The Company will be entitled to redeem the DSNG equipment against the payment of this fine. The duty foregone in Bill of Entry No.6394 dated 06.08.2003 shall also be paid along with redemption fine as the company disentitled themselves to the benefit of Notification by not fulfilling the mandatory requirement of installation certificate.

8.3 In respect of the remaining goods covered by the 10 Bills of Entry also, the Commissioner's decision to confiscate the goods under section 111[o] of the Customs Act with option for redemption has to be upheld. We have already stated our reasons for such confiscation, in the case of DSNG system. The same reasons are equally applicable to other goods. However, the quantum of fine imposed by the Commissioner is rather harsh. He took 50% of the value of the goods to be the fine. Applying the same yardstick which we employed in the case of DSNG system, we reduce this fine to Rs.21,00,000/- [Rupees Twenty One Lakhs ony] being 15% of the value. We are also of the view that the penalty of Rs.1.90 Crores imposed on the Company by the Commissioner is unconscionable. We reduce this penalty to Rs.25,00,000/- [Rupees Twenty five lakhs only] in the facts and circumstances of the case.''

2 The Notification in question, viz., Notification No.55/2003-Customs, applicable to the facts of the present case was issued on 01.04.2003.

3 The learned counsel for the appellant would only urge a point before us that once the benefit of exemption is denied to the assessee, confiscation under section 111[o] of the Customs Act, 1962, could not have been ordered by the learned Tribunal and upheld by the learned Tribunal.

4 The learned counsel for the respondent however supported the impugned order.

5 We are of the opinion that the learned Tribunal has dealt with the issue of section 111[o] of the Customs Act, 1962, in the case of the assessee and in the facts of the case, has even determined the redemption of goods applicable to the assessee. The assessee, admittedly, did not satisfy the conditions of the Notification by producing the Installation Certificate before the concerned Authority, nor he has sought extension of period for producing such Installation Certificate.

6 In these circumstances, whether the option for payment of fine or redemption of goods, would be available to the assessee or not, is a question that has already been decided by the learned Tribunal vide the aforesaid portion quoted by us.

7 Therefore, we do not find any error in the order of the learned Tribunal. However, if there is any factual error in dealing with the facts produced by the assessee/appellant herein with evidence, he is at liberty to file an application before the learned Tribunal seeking appropriate review of the order, impugned herein.

8 The appeal stands disposed of with the above observations. No costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

AP
To
1.Customs, Excise and Service Tax
Appellate Authority, South Zonal Bench
Shastri Bhawan Annexe, 1st Floor
No.26, Haddows Road
Chennai 600 006.

2.Commissioner of Customs [Airport&ACC]
Air Cargo Complex, Meenambakkam
Chennai 600 027.

+1 CC to Mr.E. Murugappan, Advocate sr 62268.
+1 CC to Mr.V.Sundareswaran, Advocate sr 62880.

SSD(CO)
SP(14/09/2019)