IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.8.2019

CORAM

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

C.M.A.No.2622 of 2017
and
C.M.P.No.14323 of 2017

M/s.Leo Fasteners (Presently known as
Grace Infrastructure Pvt. Ltd.)
Unit II, A13 & 14, Industrial Estate,
rep. by its Director Mr.A.L.Shah,
Thattanchavady, Pondicherry 605 009.
Tamil Nadu. Appellant

Versus

The Commissioner of Customs (Import),
Custom House, 60 Rajaji Salai,
Chennai 600 001. Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 130 of Customs Act, 1962 against the Final Order No.40590 of 2017 dated 24.3.2017 in Appeal No.C/8/2009-DB passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For appellant : Mr.Hari Radhakrishnan

For Respondent : Mr.T.Pramod Kumar Chopda
Senior Standing Counsel

JUDGMENT

(Judgment of the court was made by Dr.VINEET KOTHARI, J.)

The present Appeal has been filed by the Assessee, M/s.Leo Fasteners against the order of CESTAT dated 24.3.2017, by which the learned Tribunal dismissed the Appeal of the Assessee under which the Assessee had challenged the imposition of penalty under Section 112(a) of the Customs Act, 1962 and redemption fine of Rs.5,75,000/-.

2. The reasons assigned by the Tribunal in the impugned order is quoted below for ready reference:-

> "3. Heard both sides and perused the records.
>
> 4. There is no rebuttal to the NML report leading any cogent evidence to show that the goods of the description stated in the NML report was not imported. The goods imported having been tested by National Metallurgical Laboratory, which provided the technical assistance and guidance, there is no difference to the test result. Accordingly, the appeal fails in its contention as to the description of the goods. Revenue's stand on the mis-declaration of the goods is established. Added to that, learned Commissioner has very thoroughly examined in para 2 of his order what was the case before him and to appreciate his understanding, the said para is reproduced:-
>
> > "The subject bill of entry was presented for assessment alongwith invoice No.TY80700068 dated 12.7.08, packing list and mill certificate No.08071204 dated 12.7.2008 issued by the foreign supplier M/s.Tycoons World Wide Group (Thailand) Public Co. Ltd. Thailand. The referred invoice and packing list also have confirmed the description of goods as declared in the Bill of Entry. The composition of goods given in Mill Certificate showed the goods as "Non Alloy" steel of given description. Accordingly, the importer had filed the Bill of Entry for the subject goods viz., Non-Alloy-CHQ wire rods claiming benefit of Notification No.21/2002, Serial No.190C, under CTH 72139920. As per the said Notification, "Non-Alloy Steel" products falling under CTH 72 were exempted from payment of Basic Customs Duty."
>
> 5. So far as the valuation is concerned, once mis-declaration is established, the appellant loses its right to challenge the valuation further. Therefore, the valuation adopted by

> Revenue for adjudication remained unchallenged and duty is leviable thereon.
>
> 6. There is no material on record to show that the redemption fine of Rs.5,75,000/- imposed was, by any means, unreasonable or excessive when value to the extent is considered to be Rs.57,34,140/- for which duty was levied. Therefore, redemption fine remains untouched and that is upheld.
>
> 7. So far as imposition of penalty is concerned, mis-declaration follows the consequence of illegitimacy. Therefore, the penalty imposed also remains untouched and that is upheld.
>
> 8. In the result, appeal is dismissed."

3. Learned counsel Mr.Hari Radhakrishnan appearing for the Appellant/Assessee urged before us that the Assessee had imported Non Alloy material, but, only on Laboratory Test Report given by National Metallurgical Laboratory (NML), Chennai bearing No.NML/DQM/MC/F-06 dated 21.8.2008, it was found on chemical analysis that the said material contained higher Boron viz., Small Wire contained 0.0029% and Big Wire contained 0.0026% as against the limit of 0.008 % prescribed in Chapter 72 of the Customs Tariff Act, and therefore, the said Laboratory gave the report that the goods imported fell within Alloy Steel as per IS 7598:1900 (reaffirmed 1998) and on account of such alleged mis- declaration by the Assessee, penalty and redemption fine in question was imposed, which has been upheld by the learned Tribunal. He further submitted that the Assessee had no mens rea in this regard and therefore, the imposition of penalty and redemption fine deserve to be set aside.

4. Per contra, the learned Senior Standing Counsel for the Revenue, Mr.Pramod Kumar Chopda supported the impugned order of the learned Tribunal.

5. Having heard the learned counsel for the parties, we are of the opinion that no question of law arises under Section 130 of the Act for consideration by this court. We feel that the Assessee ought to have approached the Departmental Authorities for waiver of the penalty and in such circumstances, in view of a very low and marginal difference of the chemical material (Boron) content in the goods imported and that too is one of several components and that other parameters as given in the Laboratory Report being within limit is not disputed by the learned counsel for the parties, would bring the commodity in question under "Non Alloy Steel" and the Authority concerned

should have taken a liberal view of the matter regarding the imposition of penalty and redemption fine in question imposable on the goods.

6. Therefore, with the liberty to the Assessee to approach the competent Authority concerned for waiver of fine and penalty, we dispose of the present Appeal. No order as to costs. The connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

ssk.
To:

1. The Commissioner of Customs (Import),
Custom House, 60 Rajaji Salai,
Chennai 600 001.

2. The Customs, Excise and Service Tax Appellate Tribunal
South Zonal Bench
Chennai .

+1 CC to Mr. Hari Radhakrishnan, Advocate sr 69555.
+1 CC to Mr.T.Pramod Kumar Chopda, advocate sr 69477.

C.M.A.No.2622 of 2017

PA(CO)
SP(03/10/2019)