IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 6.1.2020

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

C.M.A.No.1699 of 2017
and
C.M.P.No.9098 of 2017

The Commissioner of Customs,
(Airport-Cargo), Chennai
Meenambakkam, Chennai 600 027. Appellant

Versus

Medreich Sterilab Ltd,
Medreich House,
No.12/8, Saraswathi Ammal Street,
M.S.Nagar, Bangalore 560 033. Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 130 of Customs Act, 1962 against the Final Order No.41210 of 2015 dated 14.9.2015 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For appellant : Mr.T.Pramodkumar Chopra
Senior Standing Counsel

For Respondent : Mr.Rajesh Chandrakumar for
Mr.K.Santharam

JUDGMENT

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

The Revenue has come up in Appeal against the order dated 14.9.2015 of the CESTAT whereby the learned Tribunal dismissed the Appeal filed by the Revenue in favour of the Respondent/Assessee M/s.Medreich Sterilab Limited holding that Rules 3 and 4 of the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 (hereinafter referred to as 'Rules 1996') were only procedural in nature and therefore, though the Application for registration under Rule 3 was filed later on and the Registration granted to the Respondent/Assessee to avail the exemption from payment of

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duty in respect of import under Bill of Entry No.550344 dated 28.6.2003 under which goods imported in question which were cleared by the Customs Authority on 30.6.2003, prior to the date of Registration under Rule 3 on 14.7.2003, the Tribunal upheld the order of the lower appellate authority and thereby granted the exemption claimed by the Assessee.

2. The relevant observation of the Tribunal is quoted below for ready reference:-

> "On hearing both sides and on perusal of records, we find that the Bill of Entry No.550344 was filed on 28.6.2003 and the imported consignment was cleared on 30.6.2003. Registration under Rule 3 was done on 14.7.2003 and the application under Rule 4 was filed on 18.7.2003. All these requirements are merely procedural and the intent of these Statue is to ensure that the use of the goods imported by the manufacturer are for the intended purpose as declared in the application. Rules 3 & 4 of (IGCRDMEG) are reproduced here for understanding the statue interpretation.
>
> .. ..
>
> We find that the goods imported by the Respondent Assessee were bulk drugs and the same are covered under Sl.No.80 B of Notification No.21/2003-Cus. Therefore, the impugned order of the lower appellate authority does not suffer from any irregularity and the same is upheld and the appeal filed by the Revenue is rejected."

3. The learned Senior Standing Counsel Mr.Pramodkumar Chopda submitted that the Tribunal has erred in holding that the requirement of Registration under Rules 3 and 4 of the aforesaid Rules of 1996 were only procedural and the import of goods in question prior to the registration on 14.7.2003 could not entitle the Assessee to avail the exemption of duty on the basis of such registration and therefore the Tribunal has erred in granting such exemption in favour of the Assessee.

4. Per Contra, the learned counsel appearing for the Respondent/Assessee, Mr.Rajesh Chandrakumar urged before us that a Certificate was issued by the Superintendent of Central Excise allowing the Assessee to avail such exemption with respect to the same Bill of Entry No.55034 dated 30th June 2013 on 3.7.2003 itself and therefore even though the registration of Assessee under 1996 Rules was done later on 14.7.2003, the Assessee had rightly availed the said exemption and the Rules in question are only directory in nature and therefore the order of the learned Tribunal is justified in accordance with law.

5. The Application for such Registration under Rule 3 which was made before the Authority concerned of the Excise Department

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on 14.7.2013 is not on record before us.

6. Rules 3 and 4 of the said Rules 1996 are quoted below for ready reference:-

> "Rule 3. Registration
>
> (1) A manufacturer intending to avail of the benefit of an exemption notification referred in sub-rule (1) of rule 2, shall obtain a registration from the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise having jurisdiction over his factory.
>
> (2) The registration shall contain particulars about the name and address of the manufacturer, the excisable goods produced in his factory, the nature and description of imported goods used in the manufacture of such goods.
>
> (3) The Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise shall issue a certificate to the manufacturer indicating the particulars refer to in sub-rule(2).
>
> Rule 4. Application by the manufacturer to obtain the benefit.
>
> (1) A manufacturer who has obtained a certificate referred to in sub-rule (3) of rule 3 and intends to import any goods for use in his factory at concessional rate of duty, shall make an application to this effect to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise indicating the estimated quantity and value of such goods to be imported, particulars of the notification applicable on such import and the port of import.
>
> (1A) The manufacture may, at his option, file the application specified under sub-rule (1), either in respect of a particular consignment, or indicating his estimated requirement of such goods for a period not exceeding one year.
>
> (2) The manufacturer shall also give undertaking on the application that the imported goods shall be used for the intended purpose.
>
> (3) The application shall be countersigned by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise who shall certify therein that the manufacturer is registered in his office and has executed a bond to his satisfaction in respect of end use of the imported goods in the manufacturer's factory and indicate the particulars

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of such bond."

7. We are of the opinion that the learned Tribunal has erred in holding that the Rules are merely procedural or directory in nature and upholding the grant of exemption to the Assessee in respect of Bill of Entry No.550344 dated 28.6.2003 by which the goods were imported and cleared on 30th June 2003. The Certificate issued by the Superintendent of Central Excise, relied upon by the learned counsel for the Assessee is not under the aforesaid 1996 Rules but it is only a Certificate that the Assessee has not availed the Cenvat Credit on that consignment and that Certificate has nothing to do with the 1996 Rules in question.

8. We do not see any justification for the learned Tribunal to hold that these Rules are only procedural or directory in nature and therefore it could be applied for the import made at prior point of time. Then, the very purpose of Rules and requirement of the Assessee to apply under Rule 4 for the intended imports in future would be frustrated, if these Rules were to be applied retrospectively to the imports already made. There was no question of substantial compliance by the Assessee. The very initiation of procedure of registration and application was not undertaken by the Assessee in the present case.

9. It is well settled law that to avail the exemption of duty under any Notification, the Rules and Regulations and the conditions prescribed therein have to be strictly adhered and there is no place for equity or intendment in the interpretation of the taxing Statutes. By holding that the Rules of 1996 are only procedural or directory in nature, the learned Tribunal has frustrated the very purpose of Rules 3 and 4 in question by holding that the Assessee is entitled to the exemption for import made on 28.6.2003. There is no dispute before us that the registration under Rules 1996 was granted in favour of the Assessee only on 14.7.2003 and not at any point of time prior to that and therefore we cannot uphold the order passed by the learned Tribunal.

10. The learned counsel for the Respondent/Assessee had also raised a question with regard to maintainability of the present Appeal filed by the Revenue under section 130 of the Act on the ground of issues of rate or valuation were involved and he submitted that Appeal in such cases would lie only before the Supreme Court.

11. The controversy in the present case is not with regard to the valuation of the goods in question or rate of duty, but, the question is of the wrong exemption claimed by the Assessee and granted by the Tribunal. Therefore, we are satisfied that the Appeal is maintainable before this Court in accordance with law and the said objection of the Assessee is overruled.

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12. The Appeal filed by the Revenue is, therefore, bound to be allowed and the same is, accordingly, allowed and the order passed by the learned Tribunal is set aside. No costs. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

ssk.

To:

1. The Commissioner of Customs,
(Airport-Cargo), Chennai
Meenambakkam, Chennai 600 027.

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

3. Medreich Sterilab Ltd,
Medreich House,
No.12/8, Saraswathi Ammal Street,
M.S.Nagar, Bangalore 560 033.

+1cc to Mr.T.Pramodkumar Chopra, Advocate sr.1083
+1cc to M/s.B.Satish Sundar, Advocate sr.1257

C.M.A.No.1699 of 2017

bp(co)
nr 13/02/2020

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