

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2021

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Ms.Justice R.N.MANJULA

Civil Miscellaneous Appeal Nos.820 and 990 of 2018
and C.M.P.No8065 of 2018 in C.M.A.No.990/2018

The Commissioner of Customs,
Chennai-II Commissionerate,
"Customs House",
No.60, Rajaji Salai,
Chennnai - 600 001.

...Appellant in
C.M.A.No.820/2018 &
Respondent in
C.M.A.No.990/2018 &

Vs

M/s.Soumag Eletronics Limited,
No.12, Flat "B", Chitharanya,
Kader Nawas Khan Road,
Greems Road, Chennai - 600 006.

...Respondent IN
C.M.A.No.820/2018 &
Appellant in
C.M.A.No.990/2018 &

Civil Miscellaneous Appeal filed under Section 130 of the
Customs Act against the impugned order of the Hon'ble Tribunal
in Final Order No.42229/2017 dated 09.08.2017 on the file of the
Customs, Excise & Service Tax Appellate Tribunal, Chennai.

For Appellant : Mr.V.Sundareswaran
Senior Standing Counsel

For Respondent : Mr.Hari Radhakrishnan

COMMON JUDGMENT
(Delivered by T.S.Sivagnanam, J)

The revenue is the appellant in C.M.A.No.820 of 2018 and the assessee/importer is the appellant in C.M.A.No.990 of 2018.

2.Both the appeals have been filed under Section 130 of the Customs Act, 1962 [hereinafter referred to as "the Act"] challenging the order passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai ['the Tribunal' for brevity] in Final Order No.42229/2017 dated 09.08.2017.

3.The appeals were admitted on 27.04.2018 on the following substantial questions of law:

"C.M.A.No.820/2018 was admitted on the following substantial questions of law:

(i) Whether the tribunal was justified in holding that the production of "installation" certificate of the goods imported free of duty under the "Project Import Regulations, 1986" is only directory and not mandatory?

(ii) Whether the conclusion of the tribunal that the production of "sale invoices" for having sold the computerized PCB in-circuit Tester for test bench for Ticket Office Machines would tantamount to discharge of the obligation to produce the proof of installation.

(iii) Whether the tribunal failed to appreciate that the failure to clear the "validator" imported vide Bill of Entry No.5668 dated 24.10.2009, the imported goods namely computerized PCB in-circuit Tester for test bench for Ticket Office Machines vide Bill of Entry No.5219 dated 25.01.2009 cannot be installed.

(iv) Whether the tribunal committed an error in concluding the charging of ware house interest for the uncleared goods relating to Bill of Entry No.5668 dated 24.10.2009 is unsustainable since the provision of imposing interest was only introduced by Finance Act, 1995 with effect from 26.05.1995.

(v) Whether the Tribunal was correct in applying the provisions under Section 27 (relating to claim for refund of duty) of the Customs Act, 1962 for the levy/charge of interest under Section 61 of the Customs Act, 1962 (delayed clearance of goods from warehouse).

C.M.A.No.990 of 2018 was admitted on the following

substantial questions of law:

(i) Whether remission of duty on the goods can be denied on the ground that the Revenue had auctioned the goods?

(ii) Whether the Hon'ble Tribunal had erred in confirming demand in respect of goods imported vide bill of entry No.5668 dated 24.10.1989 on the ground that no evidence was produced by the appellant for having abandoning the goods?

(iii) Whether duty demand is sustainable in view of the provisions of Section 68 of the Customs Act, 1962 which excludes duty liability on goods where the title to the goods is relinquished?"

3.We have heard Mr.V.Sundareswaran, learned Senior Standing Counsel appearing for the revenue and Mr.Hari Radhakrishnan, learned counsel appearing for the assessee/importer.

4.The revenue is aggrieved by the findings rendered by the Tribunal in paragraphs 6 and 8. The finding rendered by the Tribunal in paragraph 6 is with regard to the compliance of the requirements in respect of a project import and whether the assessee had fulfilled his obligations. The original authority and the first appellate authority held that the installation certificate as required under Regulation 7 of the Project Import Regulations, 1986 have not been produced, it goes without saying that the assessee has not installed the machinery and therefore not entitled for any benefits which would accrue to them.

5.The revenue would vehemently contend before us certain facts stating that there was difficulty in even serving notices on the assessee, there was change of address, the Management was taken over by a different set of persons and all these factors were taken into consideration while demanding duty from the assessee under Section 18(7) r/w. 28(2) of the Act. Before the Tribunal, the assessee has produced certain records which was considered by the Tribunal, it took note of the decision of the Bangalore Tribunal in the case of Creative Industries P. Ltd. vs. C.C. & C.Ex. (A-II), Hyderabad [2008 (228) ELT 379 (Tri.-Bang.)], wherein it was held that non-production of installation certificate is only a procedural requirement and not a condition determining the eligibility of the impugned goods for the benefit of concessional rate of assessment. The Tribunal further noted that the said decision was affirmed by the High Court Of Andhra Pradesh as reported in 2012 (282) ELT 349 (A.P). The Tribunal also referred to the decision of the other Tribunal which also held that the installation certificate is only a procedural requirement. The Tribunal after considering the documents placed, was satisfied that the assessee has produced

proof to establish installations and therefore, it was held that the Department cannot sustain the demand of merit rate of duty in respect of goods imported vide Bill of Entry No.5219 dated 25.01.1989. For such reasons, the assessee succeeded before the Tribunal.

6.Before us, the revenue seeks for arguing the factual aspect with a view to impress upon the scope that no installation had taken place. Per contra, there were evidences by way of invoices raised in the name of the Northern Railway produced by the assessee before the Tribunal and as well as before this Court.

7.In our considered view, the Tribunal has taken a decision on appreciation of facts placed before it by way of documents and in this appeal filed under Section 130 of the Act, we are required to decide the substantial questions of law and not to re-appreciate the factual finding unless it is shown that the finding is utterly perverse. We are not inclined to classify the impugned finding as being utterly perverse. Therefore, no grounds have been made by the revenue to interfere with the said finding. Accordingly, the appeal is dismissed as no substantial questions of law arises for consideration.

8.The other finding which the revenue is aggrieved is in paragraph 8 which speaks about the interest liability. The Tribunal was of the view that the charging of interest was introduced only with effect from 26.05.1995 by the Finance Act, 1995 and therefore, no interest can be demanded from the assessee.

9.The learned counsel for the assessee would argue that the demand for interest as in the order-in-original dated 18.11.2004 is under section 28(2) of the Act and no such interest can be demanded under the said provision.

10.In our view, the contention does not merit acceptance because if such an argument is accepted, it would be misreading the order-in-original. The order-in-original confirms the demand of Rs.1,47,65,239/- under section 18(7) read with section 24(2) of the Act, i.e. because the bill of entry was provisionally assessed under section 18(2) and subsequently merit rate of duty had been demanded under section 28(2). Therefore, the Deputy Commissioner of Customs never relied on section 28(2) of the Act to levy interest. Reading further makes the issue clearer because the adjudicating authority says that apart from the merit rate of duty, the importer is also liable to pay admissible interest for the said differential duty from the date of payment of duty on the importation. Therefore the demand for interest is a separate demand. We find that the

interest was never quantified in the order-in-original. It appears that the assessee did not seriously contest this issue before the first appellate authority but when the matter came before the Tribunal, it appears that some argument was advanced and the Tribunal presumably noting section 28AA of the Act, held that the interest liability can arise only from 1995.

11. In our considered view, the Tribunal committed an error in making such an observation as it is never the case of the revenue that interest was demanded under section 28AA of the Act. Before us, the revenue would refer to section 61 of the Act. Such contention was never raised at any earlier point of time. Therefore, in our considered view the revenue cannot be aggrieved by observations made by the Tribunal in paragraph 8 of the impugned order because demand of interest under section 28AA was never an issue. Therefore, the appeal filed by the revenue is dismissed and the substantial questions of law are left open.

12. The assessee is aggrieved by the finding rendered by the Tribunal in paragraph 7 of the impugned order which pertains to the demand of duty with regard to the goods which were not cleared. At the time of adjudication, the assessee appears to have taken a stand that though bill of entry was filed and the goods were bonded, they did not clear the goods as the Management took a decision that they do not require the equipment. Subsequently, the assessee took a different stand stating that they never filed a bill of entry and with that stand they pursued the matter under the Right to Information Act and ultimately went before the Central Information Commission and on direction issued by the Central Information Commission the Customs Department gave a reply to the assessee that there are no records available.

13. In our considered view, the contention advanced by the assessee deserved to be out rightly rejected. As rightly pointed out by the Tribunal, the assessee had filed a double duty bond undertaking and it will be too late in the day for them to state that they have never filed bill of entry. One more argument which was pressed into service before us by referring to the project import license stating that they never had a project import license for the product validator. If that was the case, the bill of entry would not have been entertained and the goods would have been right away confiscated and other proceedings would have followed on that, per contra, the goods were allowed, bill of entry was allowed to be filed and the goods were examined and a double duty bond was executed and the goods were bonded. Therefore, the Tribunal was right in holding that the contentions raised by the assessee was wholly not tenable. Therefore, we find no grounds to interfere with the

finding passed by the Tribunal. In the result, the appeal filed by the assessee is dismissed and the substantial questions of law are answered in favour of the revenue.

14. Accordingly, both the appeals are dismissed. No costs. Consequently, connected miscellaneous petitions is closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

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To

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

2. Customs, Excise & Service Tax Appellate Tribunal,
No.26, Sashtri Bhavan Annexe Building,
Haddows Road, Chennai-6.

+2ccs to M/s.HARI RADHAKRISHNAN, ADVOCATE, SR.NO. 16270,16271

+2CCs TO MR. V.SUNDARESWARAN, ADVOCATE, SR.NO.15910

C.M.A.Nos.820 and 990 of 2018

SMI (CO)
KKN 27/04/2021

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