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CUSTA/1/2022
IA No.GA/2/2022

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction
ORIGINAL SIDE

COMMISSIONER OF CENTRAL EXCISE,
KOLKATA IV, COMMISSIONERATE

-Versus-

M/S. ROYAL TOUCH FABLON PVT. LTD.

<u>Appearance:</u>
Mr. Uday Sankar Bhattacharyya, Adv.
Mr. Abhradip Maity, Adv.
...for the appellant.

Mr. Arijit Chakraborty, Adv.
Mr. Rahul Dhanuka, Adv.
...for the respondent.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE SUPRATIM BHATTACHARYA

Date : 5th September, 2022.

The Court : This appeal filed by the revenue under Section 130 of the Customs Act, 1962 is directed against the order dated 25th October, 2019 in Final Order no.76458 of 2019 passed by the Customs, Excise and Service Tax Appellate Tribunal, East Regional Bench, Kolkata (Tribunal).

The revenue has raised the following substantial questions of law for consideration:

(i) Whether in the facts and circumstances of the present case the Learned Tribunal is correct in its conclusion that the assessee was not liable to

pay Anti Dumping Duty even when he himself opted for the condition Sl. No.2 of the Notification No.23/2003-CE dated 31.03.2003?

(ii) *Whether the decision of Learned Tribunal is perverse in passing the impugned Order by ignoring the facts and circumstances of the instant case which was considered by the adjudicating authority in the Order-in-Original?*

(iii) *Whether the Learned Tribunal is right in granting the benefit of exemption notification to the assessee even in absence of any conclusive proof/evidence as to the goods for sale in DTA were manufactured wholly out of indigenous raw material?*

(iv) *Whether the Learned Tribunal erred in law and came to a perverse finding by not accepting the admitted figures available on the record by which the Respondent imported or deemed imported goods not attracting anti dumping duty whereas total DTA sales were undertaken by the Respondent on the raw materials by not paying anti dumping duty?*

(v) *Whether the conclusion arrived at by the Learned Tribunal is perverse inasmuch as, the case referred to by the Learned Tribunal in the case reported in (2010) [252] ELT 517 (P&H), cannot be said to be binding precedent in the instant case, inasmuch as the Respondent had paid duty under Serial No.2 of the said notification dated 31.03.2003 instead of Serial No.3 of the said notification, which shows that the Respondent's claim of maintenance of separate account of imported and indigenous material was an afterthought?*

We have heard Mr. Uday Sankar Bhattacharyya, learned standing counsel assisted by Mr. Abhradip Maity, learned Advocate for the appellant and Mr. Arijit Chakraborty, learned Advocate assisted by Mr. Rahul Dhanuka, learned Advocate for the respondent.

The learned Tribunal had allowed the assessee's appeal which was filed challenging the order passed by the Commissioner of Central Excise -IV, Kolkata dated 17th March, 2015 whereby the Commissioner had confirmed the demand of anti dumping duty under Section 28(10) of the Customs Act, 1962, as proposed in the show cause notice dated 29th May, 2013. The short question which falls for consideration is whether the assessee had maintained separate records of the polypropylene granules imported from ADD Jurisdiction and utilized the same only in the manufacture of export goods. The assessee contended that the onus was entirely upon the revenue to establish that the levy/charge that import of inputs from ADD jurisdiction were used in the manufacturing of finished goods cleared to the Domestic Tariff Area (DTA) and it cannot be presumed and assumed. In support of his contention, the revenue had placed reliance in the case of *Commissioner of Central Excise, Ludhiana vs. Malwa Cotton spinning Mills Ltd*. reported in [2010] 252 ELT 517 (P & H). The tribunal took into consideration the factual position and noted that the respondent had maintained separate register. Further, the tribunal on examining the facts, found that the difference cited between the table (as mentioned in the order-in-original)and the issue register for ADD material submitted by the respondent with respect to “Issues to Production” and “closing stock” was only on account of difference in methodology adopted for reflection of closing stock in the table vis-à-vis the register and the same was duly reconciled and certified in terms of the chartered accountants certificate which was furnished before the tribunal. Further, the tribunal pointed that macro-comparison of the available stock of polypropylene from known ADD jurisdiction vis-à-vis DTA clearance during 2009-10 and 2010-11 by the adjudicating authority also suffers from infirmities and had agreed with the respondent that DTA clearance of finished goods prior to 30th July, 2009, the date of imposition of anti dumping duty could not have been considered and the stock of polypropylene as on the date of introduction of anti dumping duty could not have been ignored in such macro comparison. The tribunal also took note of the decision in Malwa Cotton Spinning Mills and held that in the absence of any proof or evidence to support the left of anti dumping duty, the demand could not have been made based on assumption and presumption.

As in the case of Malwa Cotton Spinning Mills, the respondent had maintained separate accounts for the goods which was examined by the tribunal and relief has been granted. Thus, we find that there is no question of law much less substantial question of law arising for consideration in this appeal.

Accordingly, the appeal filed by the revenue (CUSTA/1/2022) stands dismissed.

Consequently, the application for stay (GA/2/2022) also stands closed.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

S.Das/As.