IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOM APPEAL NO. 1 OF 2023

The Commissioner of Customs (NS-III) ..Appellant

Vs.

M/s. Nanda Glass Industry ..Respondent

Mr. Jitendra Mishra with Ms. Sangeeta Yadav, Mr. Ashutosh Mishra for Appellant.

CORAM : G. S. KULKARNI &
JITENDRA JAIN, JJ.
DATE : JULY 11, 2023

P.C.:

1. This appeal is filed by the Revenue challenging an order dated 03 December, 2021 passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), whereby Customs Appeal No. 85400 of 2019 filed by the respondent-assessee has been allowed.

2. The Revenue has raised the following substantial questions of law:-

> "(a) Whether, in the facts and circumstances of the case, the CESTAT was right in holding that the Respondent Importer was entitled to avail benefit of Anti-Dumping Duty Notification No. 48/2014-ADD dated 11.12.2014?
>
> (b) Whether, in the facts and circumstances of the case, the CESTAT erred in not holding that Anti Dumping Duty is leviable

on all imported goods ranging from actual thickness of 3.7 mm (4 +/- 0.3) to 12.8 (12 +/- .8) ?"

3. Briefly the facts are:-

The respondent had filed two Bills of Entry declaring the goods as Float Glass of 3.8 mm thickness, imported from Saudi Arabia. The goods were detained for examination and both the Bills of Entry were assessed without levy of anti-dumping duty. On examination of the said goods, thickness was measured and the same was found to be 3.7 mm to 3.86 mm. It was revenue's case that such range of the thickness was covered under definition of nominal thickness of 4 mm [as per Bureau of Indian Standards (BIS) 14900:2000], hence, the goods were liable for anti-dumping duty at the rate of USD 58.22/MT, in terms of Notification No. 48/2014-Customs (ADD) dated 11 December, 2014 at Sr. No.1. On such premise, the goods were seized and subsequently allowed to be released provisionally on certain conditions.

4. On scrutiny of the previous import data of the subject goods, it was noticed that a total 68 consignments of Clear Float Glass of thickness 3.8 mm were imported by the respondent from Saudi Arabia without levy of anti-dumping duty in terms of the said notification. A show cause notice was accordingly issued to the respondent demanding anti-dumping duty in terms of the said notification. The show cause notice was adjudicated considering the demand of the anti-dumping duty. The respondent being aggrieved by such order, approached the tribunal in the appeal in question on which the impugned order has been passed.

5. The facts in relation to the import of the goods in question are not in dispute, in as much as the actual measurement of the thickness of the goods was between 3.73 mm to 3.86 mm. Before the tribunal, the respondent contended that in so far as import in question was concerned, the impugned order demanding anti-dumping duty in terms of the said notification was not justified, in as much as not only in respondents' own case, but also in case of one *Mudit Glassworks Palace*, the Commissioner of Customs, Nhava Sheva had passed an order dated 20 February, 2020 (order No. 835/2019-20/JC/NS-III/CAC/JNCH) whereby for similar imports, the proceeding demanding anti-dumping duty in terms of the notification dated 11 December, 2014 was dropped, as the goods imported therein were found as clear float glass of 3-8.mm. The respondent further contended that in the respondent's own case by an order-in-original No.V(30) ICD/Loni/2021 dated 30 September, 2021, similar goods namely, clear float glass of 3.8 mm on which anti-dumping duty was demanded in terms of the said notification, were dropped. It was thus contended that the goods in question were found having thickness in the range of 3.73 mm to 3.86 mm which is less than the nominal thickness of 4 mm, which were considered out of the purview of anti-dumping duty in terms of the said notification.

6. We have heard Mr. Mishra, learned counsel for the appellant-Revenue. We have perused the record, as also the impugned order passed by the tribunal. Mr. Mishra's submissions are not different from what were advanced before the Tribunal. It clearly appears that not only in the case of Mudit Glassworks Place (supra), but also in respondent's own case in respect of similar imports, the demand of anti-dumping duty was dropped. The tribunal has considered the contentions of the appellant as also of the respondents and referring to such two decisions, has come to a conclusion that the respondents' appeal in such circumstances was require0d to be allowed. The tribunal has observed that the nominal thickness has not been defined in BIS and moreover, when actual thickness is available, in that event, it would not be appropriate to extend the tolerance so as to raise a demand of anti-dumping duty under the notification in question. We find that there is nothing objectionable in the findings as recorded by the tribunal. It is also not in dispute that the earlier similar imports of the respondent were duly verified and were allowed to be cleared by the customs authorities. There cannot be two different standards for similar imports in regard to applicability of the said notification.

7. In the aforesaid circumstances, no substantial question of law would arise. We find that there is no merit in the appeal. . The appeal is accordingly dismissed.

[JITENDRA JAIN, J.] **[G. S. KULKARNI, J.]**