OD-11

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

CUSTA/18/2024
IA No: GA/1/2024
M/S. BEXIMCO INTERNATIONAL PVT. LTD.
VS.
COMMISSIONER OF CENTRAL EXCISE & CUSTOMS, BOLPUR

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 28th February, 2024

Appearance :
Mr. D. B. Dutt, Adv.
Mr. Debasish Das, Adv.
Mr. Biswarup Chatterjee,
…for appellant

The Court : We have heard Mr. D. B. Dutta, learned Counsel appearing for the appellant.

This appeal by the importer assessee is directed against the order dated 21st September, 2023 passed by the learned Customs, Excise and Service Tax Appellate Tribunal, Regional Bench, Court No.2, Kolkata in Customs Appeal No. 178/2011. The assessee has raised the following substantial questions of law for consideration :

"*i) FOR THAT the learned Tribunal erred in not appreciating the letter dated – 28.03.2011, where the* *appellant has been requested to verify the consignment and declare retail sale price of the subject goods for assessment of the same in terms of the adjudication order. From the said letter itself it is evident that the adjudication Order has been passed without any assessment, neither provisional or final. Hence the impugned Order is not sustainable in the eye of law.*

ii) FOR THAT the Learned Tribunal failed to appreciate and erred in law that the confiscation of the goods under Section 111 of the Customs Act, 1962 read with Section 125 of the said Act casts a responsibility on the adjudicating authority to allow redemption of the goods against fine to be quantified taking into consideration the total duty chargeable on the imported goods. However, in absence of data available in the show cause notice for quantification of C.V. duty on the goods the adjudicating authority cannot traverse beyond the show cause notice adjudging the quantum of redemption fine in terms of section 125."

The Tribunal by the impugned order had affirmed the order of adjudication passed by the Commissioner of Central Excise and Customs, Bolpur dated 17th March, 2011. The appellant filed bill of entry dated 24.11.2010 stating that they have imported goods of Chinese origin. On a physical examination of the goods it was found that it contained 1,029 pairs of shoes of Chinese origin, 10,656 pairs of shoes of Austrian origin and 157 of Italian origin as printed in each of the pack with its article number. Thus, there was allegation of mis-declaration against the assessee. The assessee had stated that they had imported the goods at the unit price of One Euro per pack as stock lots. After due opportunity, a show cause notice dated 7.1.2011 was issued to the appellant calling upon them to show cause as to why imported goods should not be assessed at the value of Rs.94,16,511/- for the calculation of basic customs duty for the reason given in various paragraphs of the show cause notice; why customs duty of Rs.25,28,776/- should not be demanded under Section 68 of the Customs Act, 1962 and why such demanded duty should not be subject to variation after the calculation of such duty on the basis of retail selling price to be declared on the imported goods by the importer as per various legal provisions; why the imported goods should not be confiscated under Section 111(M) of the Customs Act, 1962 and why penalty should not be imposed on the appellant importer under Section 112 of the Customs Act, 1962. The appellant submitted their reply on 11.2.2011 and thereafter the cost was adjudicated by the adjudicating authority. As could be seen from the order of adjudication which was impugned before the tribunal, an elaborate examination of the factual issues has been done by the adjudicating officer. The discussions and findings are from paragraph 4.3 of the order of adjudication. The first contention which was examined by the adjudicating authority is whether the goods so imported are actual stock lots and secondly, whether the country of origin has been declared in the bill of entry as China and thirdly, whether the comparative price under the Customs Valuation Rules, 2007 (Rules) is applicable in the assessment of the bill of entries of the appellant.

With regard to the first issue, the adjudicating authority clearly found that the import is nothing but import of brand new footwear at heavily discounted price and it is not a case of sale of second hand old goods and the appellant had also admitted in the written submission that the imported new footwear and also from the correspondence made by the appellant with the exporter, there is no mention that the footwear so imported were of second hand quality. Thus, the adjudicating authority taking into consideration the facts available on record regarding the nature of the imported, rejected the theory propounded by the appellant that the import was a stock lot. Thereafter, the assessing officer proceeded to consider as to whether the country of origin has been correctly mentioned in the bill of entry. Admittedly, the country of origin was mentioned as China but, however, during joint examination of the consignment of the ICDC it was observed that only a very nominal number of footwear were of Chinese origin and most of the goods were of Austrian origin. Though initially a stand was taken by the appellant that the purchase was a stock lot. Subsequently, they stated that they regret that if in the stock lot purchased by them, there were some shoes which are in Austria and Italy manufactured and in the written submission they reverted to their former stand and submitted that the declaration was made according to the certificate of Slovakia Chamber of Commerce. Thus, the adjudicating authority on examination of the facts it was found that it is a factual mistake of mis-declaration as regards the country of origin.

The next aspect was regarding the valuation of goods. As argued before us, it was contended before the learned Tribunal as well that the valuation has to be done in terms of the Customs Valuation Rules. This aspect was examined and the adjudicating authority held that the Rules 4 to 8 of the Customs Valuation Rules is not applicable to the instant case and Rule 10 of the Rules would stand attracted which is the residual method. Applying the said rule and also taking the unit price of such similar goods as available in the National Import Data Base maintained by the Customs Department, the valuation was drawn and ultimately, the value of the imported goods was determined and the duty thereon was computed and penalty was imposed. The correctness of this order of the adjudicating authority was tested by the learned tribunal which is the last authority which can appreciate and re-appreciate the factual position. The learned tribunal clearly opined that the finding of the adjudicating authority is a very well-considered finding and there is nothing made out by the appellant for interfering with the same. As in this appeal filed under Section 130 of the Customs Act, we have to examine whether any substantial question of law is concerned. We find none arising for consideration in this appeal as the matter is entirely factual.

Therefore, the appeal fails and is dismissed.

The stay application IA No: GA/1/2024 also is accordingly dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

SN/s.das