Darshan Patil

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

CUSTOMS APPEAL (L) NO. 30050 OF 2024
WITH
CUSTOMS APPEAL (L) NO. 30034 OF 2024

Commissioner of Customs,
Nhava Sheva-I …Appellant

Versus

Frigorifico Allana Private Ltd …Respondent

ALONG WITH
INTERIM APPLICATION (L) NO. 30748 OF 2024
IN
CUSTOMS APPEAL (L) NO. 30050 OF 2024
WITH
INTERIM APPLICATION (L) NO. 31208 OF 2024
IN
CUSTOMS APPEAL (L) NO. 30034 OF 2024

Mr Satyaprakash Sharma, a/w Adv Niyati Mankad and Adv Akash Singh, for the Appellant/Applicant.
Dr Sujay Kantawala, a/w Samsher Garud and Rohit Jain i/b Joyakar and Partner, for the Respondent.

CORAM: **M.S. Sonak &**
Jitendra Jain, JJ.

DATED: **27 November 2024**

PC:-

1. Heard learned counsel for the parties.

2. The parties agree that both these appeals can be disposed of by a common order because they challenge CESTAT's impugned order dated 28 June 2024.

3. Mr Sharma proposes the following substantial questions of law in Customs Appeal (L) No. 30034 of 2024 :-

> "1. Whether in the facts and circumstances of the case the Hon'ble CESTAT is correct in setting aside the Order of Confiscation of and consequently imposition of the redemption fine of the goods unloaded u/s. 111(h) r/w Section 125 of the Customs Act, 1962.
>
> 2. Whether in the facts and circumstances of the case the Hon'ble CESTAT is correct in setting aside the Order of Confiscation of and consequently imposition of the redemption fine of the goods removed u/s. 111(j) r/w Section 125 of the Customs Act, 1962.
>
> 3. Whether in the facts and circumstances of the case, the CESTAT was correct in law in holding that the Commissioner of Customs had failed in ascertaining if the said bonded tanks were within such customs area when none of the parties had raised such contention either before the Adjudicating Authority or before the CESTAT?
>
> 4. Whether in the facts and circumstances of the case, the CESTAT was correct in law in holding that the commissioner of customs should have estimated the "assessable value" in accordance with Section 2(41) of the Customs Act, when the said issue was not agitated by any of the Parties either before the Adjudicating Authority or before the CESTAT?
>
> 5. Whether the CESTAT was correct in law in holding that the Regulation 12 of the (Custody and Handling of Goods) Regulation, 2016 does not envisage importation of licensing conditions as part and parcel of its Regulations?"

4. Mr Sharma proposes the following substantial questions of law in Customs Appeal (L) No. 30050 of 2024 :-

> "1. Whether in the facts and circumstances of the case the Hon'ble CESTAT is correct in setting aside the Order of Confiscation of and consequently imposition of the

> redemption fine of the goods unloaded u/s. 111(h) r/w Section 125 of the Customs Act, 1962.
>
> 2. Whether in the facts and circumstances of the case, the CESTAT was correct in law in holding that the Commissioner of Customs had failed in ascertaining if the said bonded tanks were within such customs area when none of the parties had raised such contention either before the Adjudicating Authority or before the CESTAT?
>
> 3. Whether in the facts and circumstances of the case, the CESTAT was correct in law in holding that the commissioner of customs should have estimated the "assessable value" in accordance with Section 2(41) of the Customs Act, when the said issue was not agitated by any of the Parties either before the Adjudicating Authority or before the CESTAT?
>
> 4. Whether the CESTAT was correct in law in holding that the Regulation 12 of the (Custody and Handling of Goods) Regulation, 2016 does not envisage importation of licensing conditions as part and parcel of its Regulations?"

5. Mr Sharma submits that in these cases, some of the material was stored in a non-bonded warehouse, which is impermissible. He submits that though the permissions were granted, the appellant stored material more than the value permitted to be stored. He submits that the CESTAT erred in relying upon the decision of this Court in **Commissioner of Customs (Import) Mumbai vs. Finesse Creation Inc.**[1]**,** when, in fact, the Gujarat and Madras High Courts have taken a contrary view.

6. For all these reasons, Mr Sharma submitted that these two appeals may be admitted on substantial questions of law proposed by.

7. Dr Kantawala, learned counsel for the respondents, submitted that no substantial questions of law, including those

[1] 2009 SCC Online BOM 2269

now proposed by Mr Sharma, arise in these appeals. He submitted that the tribunal has considered the facts threadbare, and no appeal would lie only on questions of fact. He submitted that the facts in these appeals are not significantly different from those in the Customs Appeal (L) No. 28294 of 2024 (*Commissioner of Customs Nhava Sheva I Vs. Ganesh Benzoplast Limited*) or those in **BISCO Limited Vs. Commissioner of Customs and Central Exice**[2]. He submitted that these appeals ought to be dismissed by following these decisions.

8. Dr Kantawala submitted that the respondents import and warehouse edible oils. The warehouses where some excess material had to be stored for a limited period are in the same gated complex. He submitted that necessary permissions were applied for and obtained for such storage. He explained the circumstances in which there was a marginal increase of value in some instances, and such explanations were also accepted.

9. For all these reasons Dr Kantawala submitted that these appeals may not be admitted.

10. The rival contentions now fall for our determination.

11. Under Section 130 of the Customs Act, 1962, appeals can be entertained only if they involve substantial questions of law. Mr Sharma's contentions are factual issues that the tribunal has considered in considerable detail. In particular, the discussion in paragraphs 7 to 14 of the impugned order

[2] 2024 SCCOnline SC 340

clarifies this position. Therefore, these appeals, which attack pure findings of fact, may not be required to be admitted.

12. There are no significant differences in the factual aspects of the present appeals and the appeal in the case of *Ganesh Benzoplast Limited* (supra). Even in these appeals, the respondents import goods discharged through high-pressure pipelines from the vessel directly into tanks in the gated complex in the port area. After obtaining the necessary permissions from the authorities, some of the material may have been stored in non-bonded tanks but within the same gated complex. This was done after obtaining permission.

13. The appeals do not raise any substantial questions of law, including the ones proposed by Mr Sharma. The observations in *BISCO Limited* (supra) also deal with a similar situation, and Dr Kantawala is right to submit that the decisions in Ganesh *Benzoplast Limited* and *BISCO Limited* (supra) support the respondent's case.

14. The Tribunal was entirely justified in relying on *Finesse Creation Inc.* (supra), which is the decision of the Division Bench of this Court, instead of relying on the decisions of the Gujarat and Madras High Court. In these matters, it was the Bombay High Court, which was the jurisdictional High Court, and therefore, there was no question of the Tribunal relying upon the judgments of the other High Courts, which Mr Sharma now seeks to rely upon. The Hon'ble Supreme Court rejected the SLP against the Bombay decision. In any event, even these contentions are based upon the decisions of the Gujarat and Madras High Courts, were considered and rejected by us in the case of *Ganesh Benzoplast Limited* (supra).

15. In these matters, the Commissioner has imposed penalties by invoking the residual provision of Section 117 of the Customs Act, 1962. We disapproved such an approach in the case of *Ganesh Benzoplast Limited* (supra). This Court held that the residual provision of Section 117 of the Customs Act cannot be invoked upon realising that no fines or penalties could be imposed under Sections 111 and 112 of the Customs Act,1962.

16. The tribunal also considers the argument about exceeding the value in some instances in detail. The factual finding and the reasoning suffer from no perversity to warrant interference in appeals that must be considered only if they involve substantial questions of law. Therefore, by adopting the reasoning in *Ganesh Benzoplast Limited* (supra) and also following the decision of the Hon'ble Supreme Court in *BISCO Limited* (supra), we are satisfied that none of the substantial questions of law as proposed by Mr Sharma or even otherwise arise in both these appeals.

17. Accordingly, these appeals are liable to be dismissed and hereby dismissed without any orders for costs.

18. The Interim Applications in these two appeals are dismissed as they do not survive.

(Jitendra Jain, J) **(M.S. Sonak, J)**

Signed by: Darshan Patil
Designation: PA To Honourable Judge
Date: 29/11/2024 14:46:31