

Customs, Excise and Gold Tribunal - Tamil Nadu

S.M.M. Steel Re-Rolling Mills (P) ... vs Commissioner Of Cus. on 25 May, 2000

Equivalent citations: 2001 (130) ELT 897 Tri Chennai

ORDER V.K. Ashtana, Member (T)

1. To get this appeal heard, appellants are required to pre-deposit the differential duty of Rs. 2,72,456/- as well as mandatory penalty under Section 114(A) of the Customs Act of equivalent amount.

2. Briefly, the issue concerns the import of heavy melting scrap from Sri Lanka vide Bill of Entry No. 870, dated 22-7-1999, while the Revenue has alleged that the same was capable of being used in a manner than as a heavy melting scrap.

3. Ld. Advocate Shri A.K. Jayaraj for the appellants submits that the order impugned and the attendant Order-in-Original suffer from violation of principles of natural justice, because of two reasons :-

(a) The reliance by Revenue on a technical opinion of an Engineer of Tamil Nadu Electricity Board (TNEB) as indicated in the orders impugned was done behind their back as copy thereof was not supplied to them even though a request to that effect has been noted in the order at personal hearing stage.

(b) The enhancement of valuation of the goods by almost 300% on the basis of a Bill of Entry of June'98 is also violative of principles of natural justice because details of the Bill of Entry was not made available to them and hence they did not have an effective opportunity to rebut the validity of that import as qualifying as a contemporaneous import under the Customs Valuation Rules.

4. Ld. Advocate explains that for another import to qualify as a contemporaneous import under the Customs Valuation Rules, the import should be preferable from the same country of origin, around same time as the goods imported in dispute and description of those goods should be identical to the description of the goods under dispute. He submits on all three counts, the import relied upon by Revenue fails inasmuch as that those goods were imported one year ago, but from a different country of origin, and that a plain reading of the description shows that they were recovered from the dismantled transformers. He submits that this explanation could not be placed before the original authority as no opportunity was given to do so in the guise of their waiving the show cause notice. He submits that it has been held in the case of Gaba Electronics Pvt. Ltd. v. C.C.E., Indore as in 1999 (113) E.L.T. 528 (T) that in such cases even if the show cause notice has been waived, issue of show cause notice is a mandatory and should have been resorted to.

5. Ld. Advocate further informs about the subsequent facts of the case as follows :-

The goods were permitted to be removed out of customs charge by the Hon'ble High Court of Madras vide their order dated 27-1-2000 in Writ Petition No. 816 of 2000 and WMP No. 1218 of 2000 on the basis of the petitioner's submitting the bond for the entire amount and Bank Guarantee

for 40% of the amount. Ld. Advocate submits that this was complied with and accordingly the goods were received by the appellant manufacturing factory, and melted in their induction furnace to which effect there is a certificate dated 3-5-2000 issued by the jurisdictional Dy. Commissioner of Central Excise under Notification No. 11/97-Cus., dated 1-3-1997. A copy thereof is on the record on this case at page 36 of the paper book. Ld. Advocate further prays for consideration of the appeal itself as it lies on a short compass and for remand of the matter for reconsideration of these issues to the original authority after giving due opportunity to present their case.

6. Ld. DR Shri S. Kannan reiterates the orders impugned and submits that the similar issue was considered by this Bench vide Final Order No. 634/2000, dated 10-5-2000 [2000 (121) E.L.T. 159 (T)] wherein the similar cut sheets were not allowed as heavy melting scrap in the light of the Apex Court's judgment in the case of LML Ltd. v. C.C.E. as in 1997 (22) RLT 1 (S.C.) as also of Bajaj Auto Ltd. as in 1995 (75) E.L.T. 382. He submits that at the time of import these goods were usable as C.R. sheets and were therefore not melting scrap and it is not relevant whether now the same were melted as the goods have to be assessed at the time of import and the end-use criteria only follows thereafter. He therefore submits that the present appellants had themselves waived the show cause notice as is indicated clearly in the orders impugned and hence though the personal hearing has been granted as on record, there was no question of any violation of principles of natural justice.

7. We have carefully considered these submissions and the records of the case. We find that since the matter lies on a short compass pertaining to principles of natural justice, therefore, after granting waiver & stay in the matter, we proceed to consider the main appeal itself.

8. On careful consideration thereof, we find that even though the appellants had waived the show cause notice, the orders impugned have relied upon a technical opinion of a functionary of the TNEB and also an import made one year earlier for assessing the nature of the imported goods without giving effective opportunity to the appellants to have submitted their representation in the matter. Therefore, we find that the orders impugned have not properly followed the principles of natural justice. In view of this, we set aside the order impugned and the attendant order-in-original and remand the matter to the original authority concerned for a de novo consideration of the matter after following the principles of natural justice by giving a copy of the technical opinion of the official of TNEB relied upon as well as a copy of the Bill of Entry relied upon to enhance the valuation of the goods. Thereafter, an effective opportunity of personal hearing shall also be granted and then the ld. original authority shall proceed to pass a speaking order after duly considering the case laws noted above. As the goods have already been cleared out of customs charge in compliance of Hon'ble High Court's order, it only follows that appellants shall keep the Bond as well as the Bank Guarantee alive till the conclusion of these de novo proceedings. Ordered accordingly.