Siddharth Polymers Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-04-2000

Reported in : (2000)(122)ELT692Tri(Mum.)bai

Appellant : Siddharth Polymers

Respondent : Commissioner of Customs

Judgement :

The appellants filed 3 Bills of Entry declaring the goods as rough marble blocks/slabs. The column for declaration of the import licence etc. was kept blank. The particulars for each lot were declared in the Bs/E. At the material time, there was some information with the Customs about some persons attempting to clandestinely clear marble through the Kandla Port. The consignment was, therefore, subjected to thorough examination. Weighment of this consignment showed that there was an excess of 23.735 MTs of blocks and 56.05 Sq. Mts of slabs which came to about 6% and 13% of the total quantity respectively. Samples were drawn and on examination by technical authorities, the goods were found to be marble. Statements of the importers and Custom House Agents were recorded. The CHA admitted having written on one B/E that the marble was freely importable even knowing the fact that the goods were restricted item. In the statement of the CHA some other imports made by him were referred to. The valuation of the goods was also critically examined by the Customs. Show cause notice was issued alleging liability to confiscation of the excess weight of imported goods under Sec. 111(m) of the Act as also of the entire consignment under Sec.

111(d) and 111(m) of the Act for having been imported without valid licence. Duty was demanded on the quantity determined after taking into account the excess import. Allegation as to penalty was made.

2. Subsequent to the issue of show cause notice, the importers tendered a transferred advance licence and claimed clearance of the total consignment including the excess. The Commissioner got checked the validity of the licence and found that the licence was genuine. He, however, did not accept that the licence would cover the goods. He came to this conclusion on detailed analysis of the circulars rendered by the importers claiming that the licence would cover the disputed imports. We have seen the circular issued by DGFT No. 21/96-97 dated 06.02.97. In paragraph (1) the circular speaks of the application thereof to licences pending as on 30.09.96 on the basis of the full export made till 30.09.96. The Commissioner held that the licence presented was not capable of covering the goods. He, therefore, passed the impugned order confiscating the declared goods permitting redemption thereof on payment of fine of Rs. One crore. The excess quantity was also confiscated by him but was permitted redemption on payment of fine of Rs. 8 lakhs. He imposed penalty of Rs. 5 lakhs on the importers but exonerated the CHA. He did not enhance the value but directed payment of duty on the entire goods. The present appeal has been filed against the said order.

3. We have heard Shri Anil Balani, advocate for the appellants and Shri B.K. Choubey for the respondent.

4. The first issue is of excess weight Shri Balani submitted that the standard practice in the marble trade is to ship marginal excess material. This is to compensate the buyer for the cracks and other breakages. He stated that the excess was routinely permitted and overlooked by the Customs. In fact, at sometime, about 20% excess was condoned which later on brought to 2%. He, therefore, states that the instances of excess should not be taken to be an implication of fraud on the part of the importers. As regards the importa-bility, he stated that it was permissible to produce a licence at a later stage also. He submitted that the DGFT's instructions as adopted in the circular issued by the Directorate of Draw Back would show that the consignment was importable under

the produced licence. On this ground, he submitted that there was no cause for rendering the goods liable to confiscation under Sec. 111(d) of the Act. For the same reason, he submitted that there was no cause for imposition of penalty.

5. Shri Choubey referred to the DGFT's circular as well as the Director (Draw Back) Circular and justified the Commissioner's interpretation thereof.

6. We have considered the submissions and have seen the documents. The Commissioner held that the importers had deliberately claimed that the goods were freely importable. This according to him is an indication of mala fides. However, in the same proceedings, at a different place, he has stated with differently. In the preamble, he has clearly mentioned that the column was left blank in the case of 2 out of 3 Bs/E. He has recorded the submissions of the CHA to the effect that they had indicated the goods in the Bill of Entry as freely importable. In the final analysis, he has ignored the CHA clearly but has held against the importers for the mistake made by the CHA.7. As to the capability of the licence being submitted subsequent to the issue of show cause notice, the Commissioner has voiced no reservation. His finding is that the licence does not cover the goods.

He has spent considerable portion on his findings in establishing this.

We have examined the various contentions of the Commissioner.

8. His first impression is that where the goods are for trading purpose, such licence cannot be used. We find that where the advance licence is made transferable and is transferred, there is no requirement that the importers should be an actual user only. It is his further findings that the benefit of the DGFT circular would apply only where the exports had been made and where the issue of licence was pending as on 30.09.96. On perusal of the paragraph (1) of the said circular we found that the licence in dispute was issued in 1995 but the further paragraphs of the circular do not indicate that this facility is limited to situations where the advance licences are yet to be issued on 30.09.96 9. In fact, the Commissioner himself proceeds to examine other details of the conditions. Paragraph (2) of the DGFT circular speaks of transferred licence also. He adopts the requirement of the

colour of the import marble. In the DGFT circular, some nexus were established in the colour of the export marble and the colour of the import marble.

The circular suggests that white against white and coloured against coloured should be permitted without going into specific colour co-relation. We have seen the advance licence and also the DEEC book enclosed therewith. We find that the entries indicated export of coloured marble of about 351.758 MTs. The coloured marbles found in the consignment is about 385.585 MTs. The DEEC book shows export of about 147 MTs. of marbles without mentioning the colours. The present consignment contains about 42 MTs shown as white. Since the export documents indicate a higher quantity of marbles without colour, it is clear that there would be no doubt about the importability of the white marbles under the produced licence.

10. We find that the ld. Commissioner has made very detailed analysis to the actual shades of the imported marble. He has examined the dictionary meaning of the various nomenclature. In our opinion, when the issue before him was blocks in white colour, he did not have to go into the question, whether the pinkish grey, greyish white, grey dull etc. were different shades or not.

11. The circular dated 04.03.97 issued by the Director of Draw Back makes a specific mention of the DGFT circular and directs the Customs to follow the details of the colour given therein. This circular also extends the benefit of transferred licence which is the case before us.

12. On examination of the licence, previous exports and various circulars, we are convinced that the transferred licence was capable of covering the goods and therefore, the findings of the Commissioner as to the liability to confiscation under Sec. lll(d) of the marble blocks would not sustain.

13. The licence covers only rough marble blocks. The licence would not therefore cover marble slabs weighing 21.5 M.Ts. Since no other licence was produced, the order of confiscation thereof totally valued at Rs. 3,29,420/- would sustain. However, the quantum of fine would have to be reassessed.

14. As regards the confiscation of excess quantity, we find that in view of the long standing practice of the Customs to grant concession in the form of permission of some excess, the confiscation of the excess quantity of 23.735 MTs. of blocks and 56.05 MTs. of slabs was not sustained. The value thereof would however have to be taken into account for purpose of calculating the duty. In view of our findings, the orders of penalty on the importers also would not sustain. We summarise our order as under :- The order of confiscation of marble blocks weighing 23.735 MTs and of 56.05 Sq. Mts. of marble slabs under Sec. 111(m) of the Act is set aside. However, since the slabs were not covered under the licence produced, the entire quantity of 418.05 Sq. mts. totally valued at Rs. 4,27,367/- was liable to confiscation under Sec. 111(d) of the Act. To this extent, the order is upheld. These slabs are permitted redemption on payment of fine of Rs. 1,25,000/- (Rupees One lakh twenty-five thousand). The penalty imposed on M/s. Siddharth Polymers is remitted in full. Appropriate relief is ordered.