Commissioner of Customs, Indore Vs M/s. Pratibha Syntex Ltd.

Court: Customs, Excise And Service Tax Appellate, New Delhi

Date of Decision: Jan. 17, 2025

Acts Referred: Customs Act, 1962 â€" Section 111(m), 112(a), 114A, 117

Hon'ble Judges: Dr. Rachna Gupta, Member (J); Hemambika R. Priya, Member (T)

Bench: Division Bench

Advocate: Girijesh Kumar

Final Decision: Allowed

Judgement

Dr. Rachna Gupta, J

1. Present is an appeal filed by the department, being aggrieved of order in appeal no. 12/2022-23 dated 21.07.2022 vide which it has been held that

there is no short payment of duty as was confirmed against the appellant vide order in original no. 10/2020Ã¢â‚¬" 21 dated 16.03.2021.

2. The facts in brief relevant for the present adjudication are that M/s Pratibha Syntex Ltd., the respondent was listed for Premise BasedAudit vide

DGARM letter no. 229/2018RMCC/5665 dated 1.2.2019. Accordingly, the appellant was required to provide details of import and export from all

ports for the period w.e.f. 1.4.2015 to September 2019. From the documents received, the respondent was observed to have filed a Bill of Entry dated

7.9.2017 for import of goods declared as Ã¢â‚¬ËœSingle Jersery Circular Knitting Machine, Model MV 4-3.2(ii)Ã¢â‚¬â„¢ with declared assessable value of Rs.

8134035/- classifying them under CTH 84471219 of CustomsTarrif Act, 1975 The respondent declared IGST @ 12% taking benefit of entry at serial

no. 230 of schedule-I of IGST notification no. 01 dated 28.06.2017. department formed an opinion that the goods imported were knitting machine

which are classifiable under serial no. 339 of schedule-III of the revised IGST notification no. 41/2017 dated 14.11.2017 according to which the IGST

rate is @18% and that the CTH 84471219 covers Air Based Atta Chakki/Pawan Chakki, which admittedly is not the imported good.

3. Based on this opinion the respondent was alleged to have short paid the duty amounting to Rs. 10,57,425/-. The said amount of duty was proposed

to be recovered vide the show cause notice no. 440/2020-21 dated 21.09.2020. It was proposed that the correct IGST leviable on the goods is @18%

and benefit under serial 230 of IGST notification no. 01 dated 28.06.2017 was erroneously claimed. The said act was alleged to be an act of

suppression of material facts, resultantly the goods were proposed to be liable to confiscation in terms of section 111 (m) of the Custom Acts 1962.

Penalty was also proposed to be imposed upon the appellant under section 112 (a) / 114 A and / or section 117 of Customs Act 1962. The said

proposal was confirmed by the original adjudicating authority vide the order in original as mentioned above. The appeal against the said order, as was

filed by the present respondent has been allowed in their favour the vide the impunged order in appeal. Being aggrieved the department-appellant is

before this tribunal.

4. None was present for the respondent-assessee on 28.10.2024, when, in compliance of previous order dated 21.08.2024 no other opportunity to

respondent assessee was given to appear and to make submissions. In light of the clarification, in the order dated 21.08.2024 the respondent assessee

was proceeded against ex-parte. Arguments on behalf of department, through Sh. Girjesh Kumar, Authorised representative (AR), heard.

5. Ld. AR submitted that the Commissioner (Appeals) has relied upon such decision i.e. in case of M/s Prince Spintex Pvt. Ltd. vs. Union of India

reported in 2020 (35) GSTL 261 (Guj), which was already challenged by the department before HonÃ¢â‚¬â„¢ble Supreme Court of India vide SLP (C) no.

012936/2020. It got registered in November,2021 i.e. much prior the impunged OIA dated 20.07.2022. It is submitted that Commissioner (Appeals)

ought to have refrained from relyingupon such decision. It is further submitted that even the applicability of the said judgement / decision has not been

discussed in the said order. Most of the findings are regarding applicability of amendment of Notification no. 16/2015 -Cus vide Notification no

79/2017 dated 13.10.2017 at serial no. 1 thereof; that the said amendment was made applicable to the imports made during the period 1.07.2017 to

13.10.2017. Ld. AR has impressed upon that Commissioner appeal has not even adjudicated as to whether the said Notification holds good or not.

Above all those notifications were never the subject matter of the show cause notice nor were raised as defense, by the respondant atthe time of

investigation nor any reply to show cause notice was filed. The original adjudicating authority has rightly held this ground to be beyond the scope of

show cause notice. Based on these submissions the impunged order in appeal is prayed to be set aside and the department appeal is prayed to be

allowed.

6. Having heard the AR for the department and perusing the record of impugned appeal, we observe that the assessee-respondent, in the present

case, had filed the cross objection no. 50303 of 2023 mentioning that Gujarat High Court decision in the case of M/s Prince Spintex (Supra) is squarely

applicable to the facts of the present case more so for the reason that the said order has not yet been set aside by HonÃ¢â‚¬â„¢ble Supreme Court. The

reliance was also placed on Notification no. 79 of 2017 dated 13.10.2017 which extends exemption from the whole of IGST on the import of capital

goods. The HonÃ¢â‚¬â„¢ble Gujarat High Court has allowed the refund of IGST to the petitioner even if paid on the capital goods imported under EPCG

scheme during the period 1.07.2017to 12.10.2017. Hence the IGST paid @5% is rather refundable to the assessee-respondent and there is no short

payment of duty. The demand was wrongly confirmed by original adjudicating authority. The respondent mentioned in their cross objection, that they

have strong case on merits in their favour. Commissioner (Appeals) has also given the findings on merit in para 8 and 8.1 of the impunged Order in

Appeal. It is also been mentioned in the cross objection that the incorrect serial no. of IGST notification (serial no. 230) was wrongly mentioned in the

impugned Bill of Entry by the Custom House Agent of the respondent-importer. There was no malafide on part of the respondent. Hence the

extended period of limitation was wrongly invoked while issuing the impunged the show cause notice and the penalties were also wrongly imposed.

The respondent accordingly has prayed for upholding the Order in Appeal and for dismissing the department appeal.

7. In the light of above observed contentions in the cross objection filed by the respondent, the submissions made by Ld. AR and after perusing the

record of the present appeal,following are the admitted facts: -

1. The appellant has imported Ã¢â‚¬Ëœsingle jersey Knitting MachineÃ¢â‚¬â„¢ falling under CTH-84471219 of Custom Tarrif Act vide Bill of Entry

dated 7.9.2017

2. The description of goods is also as per the invoice dated 28.07.2017 issued by the supplier M/s Mayer & CI Rundstrickmaschinen,

Germany

3. The importer-respondent paid IGST @5% while taking the benefit of serial no. 230 of schedule Ã¢â‚¬" I of IGST notification no. 1 dated

28.06.2017. This has been mentioned to be a clerical mistake in the cross objection.

4. Serial 230 of notification no. 1 dated 28.06.2017 prescribed IGST @5% for the import of Air Based Atta Chakki / Pawan Chakki

8. From the conjoint reading of the above observed admitted facts, it is clearly established that serial 230, the rate of IGST thereunder, was admittedly

not applicable to the goods imported by the respondent importer.

9. We further observe that the show cause notice is silent about bill of Entry to have been filed under EPCG scheme floated under Foreign Trade

Policy as an incentive scheme. The respondent also did not make any submission to this effect along with the applicability of notification no. 79 of

2017, at the stage of investigation. The plea was taken before the original adjudicating authority. However, has not been considered for being beyond

the show cause notice and also for the reason that the respondent had never approached the department to rectify the clerical mistake about entry no.

230 of notification no. 1 dated 28.06.2017 and about not mentioning the benefit notification no. 79 of 2017 dated 13.10.2017. The Commissioner

(Appeals) has reversed those findings relying upon the bill of entry and EPCG license.

10. We observe that none of those documents are on records. Otherwise also, as observed by HonÃ¢â‚¬â„¢ble Gujarat Hight Court in M/s Prince Spintax

(Supra) it was observed that the objective of the EPCG scheme is to facilitate import of capital goods for producing quality goods and services to

enhance IndiaÃ¢â‚¬â„¢s export competitiveness. In the present case, we do not find any evidence to prove that the goods imported were the capital goods

for the respondent-importer. Hence, we refrain ourselves from accepting the findings of Commissioner (Appeals) holding the imported goods as the

capital goods imported under EPCG scheme. Otherwise also the goods were self-declared and self-assessed by the respondent as Ã¢â‚¬Ëœ Single Jersey

Circular Knitting MachineÃ¢â‚¬â„¢ on which IGST @18% is applicable. The respondent on the contrary had paid IGST only @5% which was applicable

in case the imported goods had those would have been Atta chakki. From no stretch of imagination, the said mention appears to be a clerical mistake it

is rather held to clearly be an act of paying short amount of IGST as was held by the original adjudicating authority. It is therefore held to be an act of

suppression/misrepresentation of facts.Accordingly we hold that SCN had rightly invoked the extended period of Limitation. The original Authority had

rightly accepted the same while confirming the demand for the period beyond the normal period of limitation.

11. Hence, we do not want to differ from the findings arrived at by the original adjudicating authority while confirming the demand of amount of short

paid duty and the order of imposing penalty under section 114 A of Custom Act 1962. The imported goods are rightly held liable for confiscation under

section 111 (m) of Custom Act 1962. The goods, however were not available for confiscation. Hence original order of not imposing any redemption

fine on the respondent-importer is also justified. With these observations we hereby set aside the order in appeal being contrary to legal and justified

findings. Consequent thereto the appeal filed by the department is hereby allowed and Cross application filed by the respondent is accordingly,

disposed of.

[Order pronounced in the open court on 17.01.2025]