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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20091 of 2017

(Arising out of Order-in-Appeal No. 170/2016-CE AU-I dated 7.11.2016 passed by the Commissioner of Central Excise (Appeals-I), Bangalore.)

M/s. Mineral Enterprises Limited
Registered Office at Khanija Bhavan,
3rd Floor, West Wing,
No.49, Race Course Road,
Bangalore – 560 001.

Appellant(s)

VERSUS

The Commissioner of Central Excise and Customs
C.R. Building,
Queen's Road,
Bangalore – 560 001.

Respondent(s)

WITH

Customs Appeal No. 20711 of 2017

(Arising out of Order-in-Appeal No. 106/2017-CE AU-I dated 7.3.2017 passed by the Commissioner of Central Excise (Appeals-I), Bangalore.)

M/s. Mineral Enterprises Limited
Registered Office at Khanija Bhavan,
3rd Floor, West Wing,
No.49, Race Course Road,
Bangalore – 560 001.

Appellant(s)

VERSUS

The Commissioner of Central Excise and Customs
C.R. Building,
Queen's Road,
Bangalore – 560 001.

Respondent(s)

APPEARANCE:

Shri N. Anand, Advocate for the Appellant

Shri K. A. Jathin, Authorised Representative for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20381 - 20382 /2024

DATE OF HEARING: 12.04.2024
DATE OF DECISION: 12.04.2024

PER : R. BHAGYA DEVI

The appellant is a 100% Export Oriented Unit (EOU) and appeals have been filed against Order-in-Appeal No. 170/2016-CE AU-I dated 7.11.2016 and Order-in-Appeal No.106/2017-CE dated 07.03.2017. Since the issue involved in both the appeals is common, they are taken up together for disposal.

2. The brief facts are that the appellant had imported one power screen track mounted screening plant T Chieftain valued at Rs.78,12,454/- vide Bill of Entry No.696953 dated 03.08.2006. Though the Development Commissioner vide their letter dated 14.12.2007 had permitted for debonding of the above capital goods, the appellant had not de-bonded them. Meanwhile, a mob of villagers on 24.07.2008 entered their premises and burnt the capital goods. Subsequent, to this the goods were de-bonded and cleared as scrap and paid the relevant duties accordingly. However, notice dated 13.12.2012 was issued for demanding the differential duty on the original capital goods, which was adjudicated by the Original Authority confirming the demand and upheld by the Commissioner (Appeals) in the impugned order.

3. At the outset, the learned counsel submits that both the show-cause notices invoking extended period under proviso to Section 28(1)/28(4) of the Customs Act, 1962 are not sustainable. It is submitted that the Commissioner (A) in one of the impugned order had categorically recorded a finding that the extended period of limitation cannot be invoked and accordingly, dropped the penalty under Section 114A instead of setting aside the entire order. It is further submitted that the notice was issued under Section 28 but the demand has been confirmed under Section 72 of the Customs Act, 1962 thus the order has

traversed beyond the scope of the show-cause notice and cannot be upheld in view of the following decisions:

- **CCE vs. Gas Authority of India Ltd.: 2008 (232) ELT 7 (SC)**
- **CCE vs. Brindavan Beverages (P) Ltd.: 2007 (213) ELT 497 (SC)**
- **Saci Allied Products Ltd. Vs. CCE: 2005 (183) ELT 225 (SC)**
- **Reckitt & Colman of India Ltd. Vs. CCE: 1996 (88) ELT 641 (SC)**
- **CCE vs. Sun Pharmaceuticals Inds. Ltd.: 2015 (326) ELT 3 (SC)**

3.1 It is further submitted that the Department vide their letter dated 26.04.2010 granted permission to clear the burnt capital goods on the highest rate quoted and based on the permission, the appellant had cleared the goods and paid the duty, accordingly, on highest quoted price. It is also submitted that the order is contrary to the provisions of Section 22 and Section 23 of the Customs Act, 1962, where the Act allows abatement of duty on damaged or deteriorated goods and relied on the following decisions:

- **Jindal Vijayanagar Steel Ltd. vs. CC: 2006 (201) ELT 18 (Tri.-Bang.)**
- **CC, Bangalore vs. Next Fashion Creators Pvt. Ltd.: 2012 (280) ELT 374 (Kar.) affirming the Tribunal's decision as reported at 2006 (206) ELT 1015 (Tri.-Bang.)**
- **Winsome Yarn Ltd. vs. CCE: 2001 (134) ELT 686 (Tri.-Del.)**

3.2 The learned counsel further submits that the appellant vide their letter dated 6th March 2010 to the Development Commissioner, Cochin, Special Economic Zone, Bangalore, that they wanted to de-bond the capital goods which had been burnt during the riots in their plant. The letter clearly mentions that "*we will de-bond the capital goods and pay the duty on the scrap and dispose of the same as per the customs procedure.*" and requested for No Objection Certificate. The Office of Development Commissioner vide their letter dated 11.03.2010 granted permission for de-bonding of capital goods as per Para 6.15(b) of Chapter 6 of Foreign Trade Policy 2009 – 2014, subject to payment of applicable duties and observance of customs formalities. It is also submitted that the Department vide letter dated 13.01.2011 had directed the appellant to pay balance duty of Rs.75,821/- which was already complied by the

appellant and informed vide their letter dated 14.01.2011. Thus, all the facts were before the authorities concerned and duties were discharged as per their liability under intimation to the respective authorities. Hence, the question of suppression or demand of duty on the original capital goods which were burnt, does not arise.

4. The learned Authorised Representative (AR) for the Revenue reiterated the findings of the Commissioner (A). It is further submitted that against the appeal filed by the Department before the Commissioner (A) for demand of penalty equivalent to duty and interest, the Commissioner (A) upheld the penalty equivalent to duty and interest.

5. Heard both sides. There are two appeals; in the Appeal No. C/20091/2017 against the impugned Order-in-Appeal No. 170/2016-CE AU-I dated 7.11.2016, an appeal was filed by the appellant before the Commissioner (A) against the Order-in-Original No.11/2014 dated 12.02.2014 for setting aside the entire order and the impugned order confirms the demand of duty along with interest and drops the penalty imposed under Section 114A on the ground that "*Section 114A is applicable only in a case where the duty has been short levied by reason of collusion, wilful misstatement or suppression of facts and in the instant case, there had been continuous correspondence between the appellant and the department on this issue and there is no suppression of facts.*"

5.1 In the appeal No. C/20711/2017 against Order-in-Appeal No. 106/2017-CE AU-I dated 7.3.2017, Department had filed an appeal against the same Order-in-Original referred above for demand of penalty equivalent to duty and interest, which was confirmed by the Commissioner (A) in the impugned order. Hence, two appeals on the same issue regarding demand of duty on the capital goods which were cleared after they were burnt by the mob of villagers.

6. The appellant has placed before us a press report dated 25.07.2008 where it is mentioned that miscreants set fire to the crusher and screening equipment at Abbige near Chikkanayakanahalli during a protest by farmers against recommencement of mining activities. Apparently, the appellants 100% EOU located at the above place the impugned capital goods were destroyed by the mob of villagers. It is also on record that the insurance claimed by the appellant was informed to the jurisdictional Superintendent of Central Excise. As per the insurance claim, the proportionate duty claimed was Rs.1,37,080/-. Based on the Mahazar drawn by the Customs on 29.07.2008, it is seen that the appellant had filed a police complaint dated 25.07.2008 and the damages caused to the capital goods were also noted in the Mahazar. On 25.07.2008, the appellant had informed the department that the mob had damaged all the machineries, building and other property on 24.07.2008 including the 100% EOU plant. Another letter dated 04.03.2010 was written to the customs requesting for de-bonding the capital goods which were burnt during the riots and the letter also mentions that duty will be paid on the highest bidder of the scrap after disposing the same as per customs procedure. Letter dated 6.03.2010 to the Development Commissioner, the appellant had intimated them that they had decided to scrap the machines which were burnt during the riots and requested for a No Objection certificate to de-bond the capital goods and pay the duty on the scrap. In response to this letter, the Assistant Development Commissioner has allowed them to de-bond the capital goods as per Para 6.15(b) of Chapter 6 of the Foreign Trade Policy, 2009 – 2014 subject to payment of applicable duties and observance of customs formalities.

6.1 In view of the above stated facts, it is clear that the appellant had intimated about the riots and taken the necessary permissions from the authorities concerned for de-bonding the

burnt capital goods as per the Customs procedures and to pay duty on the scrap value on the highest bidder of the scrap. Since permission was granted by the customs, the question of suppression of facts or misrepresentation of facts does not arise and hence, the show-cause notice cannot invoke extended period of limitation. It is also pertinent to mention that the Commissioner (A) in the impugned OIA No.170/2016drops the penalty imposed under Section 114A stating that "*in the instant case, there had been continuous correspondence between the appellant and the department on this issue and there is no suppression of facts".* It is also observed that in the impugned Order-in-Appeal No.170/2016, the Commissioner (A) upholds the demand under Sections 72(1) of the Customs Act, 1962 in terms of B17 bond executed by the appellant; while the order in original confirmed the demand Section 28(8) of the Customs Act, 1962. The show-cause notice dated 13.12.2012, the demand was under Section 28(1) and 28(4) of the Customs Act, 1962. As rightly submitted by the appellant, the order cannot traverse beyond the show-cause notice and hence, the demand confirmed by the Commissioner (A) in the impugned order under Section 72 of the Customs Act, 1962 is not sustainable in view of the decisions referred by the learned counsel. In the case of **CCE vs. Gas Authority of India Ltd., (**supra) the Hon'ble Supreme Court held that:

> **"7.** As repeatedly held by this Court, show cause notice is the foundation of the Demand under Central Excise Act and if the show cause notice in the present case itself proceeds on the basis that the product in question is a by-product and not a final product, then, in that event, we need not answer the larger question of law framed hereinabove. On this short point, we are in agreement with the view expressed by the Tribunal that nowhere in the show cause notice it has been alleged by the Department that Lean Gas is a final product. Ultimately, an assessee is required to reply to the show cause notice and if the allegation proceeds on

the basis that Lean Gas is a by-product, then there is no question of the assessee disputing that statement made in the show cause notice."

7. In view of the above, the impugned orders are set aside and the appeals are allowed.

(Operative portion of the order was pronounced
in open court on conclusion of hearing.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

rv