

2012 (279) E.L.T. 491 (Kar.)

IN THE HIGH COURT OF KARNATAKA AT BANGALORE
N. Kumar and Ravi Malimath, JJ.

COMMISSIONER OF C. EX., CUS. & S.T., MYSORE

Versus

VINAY CHANDRA

C.S.T.A. No. 25 of 2008, decided on 29-7-2011

Penalty - Imposition of - Managing Director of importer company, an EOU, alleged to have un-authorisedly removed from factory machinery imported duty free - Department alleging that impugned machinery was scrap, where as it was declared to have been manufactured in 1990 - However, Tribunal finding that description in bill of entry matched with that in approval for import by government and Chartered Engineer Certificate, and at time of removal of machine, Managing Director had been removed from his office - In that view, Managing Director could not be held liable for misdescription and made liable to penalty under Section 112(a) of Customs Act, 1962. [para 5]

Appeal dismissed

REPRESENTED BY : Shri N.R. Bhaskar, Advocate, for the Appellant.
Shri Kiran S. Javali, Advocate, for the Respondent.

[Judgment per : N. Kumar J.] - This appeal is by the revenue being aggrieved by the order of the Tribunal [2008 (230) E.L.T. 295 (Tribunal)], which has set aside the penalty imposed on the assessee on the ground of misdeclaration.

2. The assessee M/s. Reining Lighting (I) Ltd., a hundred per cent export oriented unit having their manufacturing unit situated at Mysore, imported certain machinery under two Bills of Entry dated 30-1-1996 and 8-2-1996. It was imported free of duty under the 100% EOU scheme after taking necessary permission and observing the formality. In terms of the approval, the unit was required to manufacture and export energy saving florescent tubes. The value of the imported capital goods was of the order of Rs. 3.92 crores. Investigation revealed that after importing this machinery to Mysore unauthorisedly, it was removed to another premises at Bangalore. Therefore, proceedings were initiated against Sri. Vinay Chandra, Managing Director of the assessee at that point of time who was levied with a penalty of Rs. 50 lakhs under Section 112(a)(ii) of the Customs Act. The allegation against him was that he caused mis-declaration in the bills of entry, which showed that the machinery imported was manufactured in 1990 whereas, they were scrap machinery which were manufactured in 1964-65. Therefore, the imported machinery was not capable of manufacturing energy saving florescent tubes. Aggrieved by the said imposition of penalty, he preferred an appeal. The appeal came to be dismissed. He preferred an appeal to the Tribunal. The Tribunal held that at the time of removal of machinery from Mysore to Bangalore, Mr. Vinay Chandra has not associated with the unit as he had been removed from the office. The Government of India had already approved the import of the machinery. They had approved only after confirming themselves that these machines were capable of producing energy saving lamps. The description in the bills of entry was identical to the description given in the approval by Government of India. The Chartered Engineer's certificate showed that the machines were actually manufactured in 1985. Further, the material on record showed that Mr. Vinay Chandra had ascertained from the supplier that the machines were completely and fully refurbished in 1985 and was assured that they can be used for another 10 years from the date of shipment. As against this undisputed material and the statement of the co-noticee and the officials of the department, the said material was brushed aside and a finding against the assessee was recorded imposing penalty. Hence, the Tribunal set aside the said finding. It is against this order, the revenue was preferred by this appeal.

3. We have heard the learned Counsels for the parties.

4. The appeal was admitted on 6-3-2009 to consider the substantial questions of law:

- (i) Whether CESTAT was right in setting aside the entire penalty of Rs. 50 lakhs imposed on respondent for his role or misdeclaration of age of machinery so as to get import benefit in the Bills of entry?
- (ii) Whether CESTAT was right in holding that investigation has not been properly carried out and the respondent has not gained by the misdeclaration in the Bills of entry?

5. The material on record disclosed that the assessee was a hundred per cent export oriented unit. They imported the impugned machinery after obtaining the requisite permission and observing the formalities. The approval given by the Government of India, the certificate issued by the Chartered Engineer and what is mentioned in the bill of entry are all identical. At the time the machinery was removed from Mysore to Bangalore, the said Mr. Vinaya Chandra was not in office. Under these circumstances, holding him liable for misdescription on the statement of the co-noticee and the officials of the department, was not proper. The finding recorded by the Appellate Authority is contrary to the legal evidence on record. Therefore, the Tribunal was justified in interfering with the said finding and setting aside the penalty imposed on Mr. Vijaya Chandra. In that view of the matter, we do not see any justification to interfere with the well-considered order passed by the Tribunal. Accordingly, the substantial questions of law framed in this appeal are answered in favour of respondent and against the revenue. The appeal is dismissed.