IN THE HIGH COURT OF MADRAS

Case Tracker
CC Vs KALRA EXIM PVT LTD [CESTAT]

CMA No.3427 of 2013

M/s KALRA EXIM PVT LTD
LOWER RANGA II FLOOR, FLAT 4-D
KOLKATA - 700019

Vs

1) COMMISSIONER OF CUSTOMS (IMPORTS)
CUSTOMS HOUSE, NO 60, RAJAJI SALAI
CHENNAI - 600001

2) CUSTOMS EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH NO 26, SASHTRI BHAVAN ANNEXE BUILDING
HADDOWS ROAD, CHENNAI - 600006

Dr Vineet Kothari & C V Karthikeyan, JJ

Dated: July 02, 2019

Appellant Rep by: Mr S Krishnanandh
Respondent Rep by: Mr A P Srinivas - for R1

Cus - The assessee has filed the present appeal aggrieved by order 2013-TIOL-1896-CESTAT-MAD, whereby the Tribunal set aside the order of Commissioner (A) and restored the order of the adjudicating authority and extended the time limit for assessee to re-export the goods in question till 31.10.2013, if the goods were still available with the Customs Department - The Tribunal was justified in applying the ratio laid down by Division Bench of this Court in case of *M/s.Avenue Impex*and holding that since the labeling defects which were of non-rectifiable character like 'best before date', were not being mentioned and also the ingredients of imported items being alcoholic beverages were also not mentioned, the relaxation as claimed under the Regulations notified on 05.08.2011 issued by FSSAI, New Delhi could not be extended to the assessee, even though the Regulation itself became enforceable after the date of import in question - Therefore, assessee could not claim applicability of same to the import in question on a prior date as a matter of right, even if the principles of adhoc guidelines dated 20.05.2011 was to be applied - The Tribunal was justified in finding that the defects in labeling, as pointed out by adjudicating authority, were of non-rectifiable character and therefore, the goods in question could not be allowed to be imported into India and therefore re-export was directed - Despite there being no interim order in the present appeal, which is pending since 2013, the directions of Tribunal to re-export the goods in question before 31.10.2013, have not been complied with by assessee - Assessee submitted that the goods in question are still lying in the custody

of Customs Department - By the lapse of time, uselessness and devaluation of these goods in terms of labeling requirements, might have further gone up and therefore, the direction of re-export does not call for any interference in the present appeal filed by assessee - The appeal is devoid of any merit and the same is dismissed: HC

Petition dismissed

Case law cited:

The Commissioner of Customs -Vs- M/s.Arena Impex in C.M.A.No.1088 of 2012 dated 08.10.2012... Para 3

JUDGEMENT

Per: M Sundar:

The assessee M/s.Kalra Exim Private Limited, Chennai has filed the present appeal, aggrieved by the order dated 06.09.2013 = *2013-TIOL-1896-CESTAT-MAD* passed by the Single Member of the Central Excise and Sales Tax Appellate Tribunal (hereinafter referred to as "CESTAT"), whereby the learned Tribunal set aside the order of the Commissioner (Appeals) and restored the order of the adjudicating authority and extended the time limit for the assessee to re-export the goods in question till 31.10.2013, if the goods were still available with the Customs Department. The relevant portion of the order of the learned Tribunal, discussing the facts and legal position with respect to the goods in question, which were imported by the assessee viz., red wine, white wine and extra virgin olive oil under the Bill of Entry dated 29.07.2011, is quoted below for ready reference.

"11. I have considered submissions on both sides. I find that the Bill of Entry was filed on 29-07-2011. The Food Safety Standards Regulations (Packaging and Labeling) Regulation 2011 notified on 01-08-2011. But even prior to notification of the regulations administrative instructions were in force as observed by the Hon Madras High Court in the case of Avenue Impex (Supra). Para 8 of the order is re-produced below.

"8. The Director General of Health Services has sent a letter dated 30th October 2012, to all Food (Health Authorities, all Port Health Officers / Airport Health Officer, all Customs Officers and all Central Food Laboratories and Public Analyst Laboratories with regard to the analysis of imported food products. It is stated among other things in the said letter that PHO's / APHO's and Customs Officers are requested to check the labels of imported foods as per the provisions of the PFA Act and the Rules as made thereunder before the samples of such products are sent to the laboratories. As per clause (3), it is stated as follows:-

(iii) The Port Health Officers / Airport Health Officers and Customs Officers are requested to examine the labels of all the imported food Products in their level itself. In case the deficiency on the label is not rectifiable, such products should not be allowed to be imported into India.

The labeling requirements which are not rectifiable if the information relating to the following are not given on the label:-

a) Name of the Manufacturer

b) List of ingredients in descending order of composition by weight and volume.

c) The name and address of the Manufacturer.

d) The Date of Manufacture

e) "Best Before Date" or "Export Date"

f) Batch No. Or Code No.

g) Net weight or Volume

h) If the imported product is not meeting with the labeling requirements given above, samples of such product shall not be sent to the laboratories for analysis."

12. The above instructions classified defects into rectifiable defects and others. One of the non rectifiable defects is the requirement of labeling "Best before date". This may not have applied for wines in view of the circular dated 20.05.2011. But, even for applying the provisions of the circular dated 20.05.2011, there was need for a label showing alcoholic content which appears to have been not present. Labeling of ingredients list was also classified as a non-rectifiable defect. In such a situation, the decision of the Honourable Madras High Court in the case of Avenue Impex (supra) is to be applied. The decision in the case of Mahaveer Polychem and another Vs.UOI W.P.Nos.16191 and 16192 of 2012 is by a Single Judge and the decision in the case of Avenue Impex is a decision of the Division Bench. So, the latter has to be followed in this proceeding.

13. So I set aside the order of Commissioner (Appeal) and restore the order of the adjudicating authority. However, the time limit for re-export of goods is extended till 31-10-2013 if the goods are still available with the customs department."

2. Learned counsel for the assessee Mr.Krishnanandh urged before us that the learned Tribunal has erred in setting aside the order of the learned Commissioner (Appeals), and not referring and relying upon the provisions of the Food Safety and Safety (Packing and Labelling) Regulations 2011, which was notified only on 05.08.2011. He submitted that under these regulations, the commodity in question viz., wine had certain relaxations and the defects in the labeling, which were pointed out by the adjudicating authority, were not applicable to the import of these commodities viz., red wine and white wine and therefore, merely relying upon the provisions of the Prohibition of Food Adulteration Act, the learned Tribunal ought not to have relied upon the Division Bench Judgment of this Court in the case of M/s.Arena Impex and hold that there were defects in labelling and justifying the directions of re-export by the adjudicating authority.

3. On the other hand, Mr.Srinivas, learned counsel for the Revenue has submitted before us that firstly the Regulations were notified and came into force only on 05.08.2011, whereas the import in question was on a prior date, just a few days earlier ie., on 29.07.2011. He further submitted that the learned Tribunal was right in relying upon the decision of the Division Bench of this Court in "*The Commissioner of Customs -Vs- M/s.Arena Impex in C.M.A.No.1088 of 2012 dated 08.10.2012*, in which the Coordinate Bench of this Court has quoted in paragraph 8 of the judgment, the order of the Director General of Health Services dated 30.10.2012, and referring to various requirements of the labeling of the products, like ingredients of the commodity, date of manufacture, best before date or export date etc., held that those requirements were not met by the goods in question, imported by the appellant assessee, and therefore, the learned adjudicating authority as well as the learned Tribunal were justified in directing the re-export of the goods in question, whereas the Commissioner (Appeals) was not justified in giving the relaxation of the applicability of the said requirements on the basis of the relaxation given under the 2011 Regulations with respect to wine and alcoholic beverages under the provisions of the Notification dated 20.5.2011, relied upon by the learned counsel for the Assessee.

4. Having heard the learned counsel for the parties, we are of the considered opinion that the learned Tribunal was justified in applying the ratio laid down by the Division Bench of this Court in the case of M/s.Avenue Impex (supra) and holding that since the labeling defects which were of non-rectifiable character like 'best before date' etc., were not being mentioned and also the ingredients of the imported items being alcoholic beverages were also not mentioned, the relaxation as claimed under the Regulations notified on 05.08.2011 issued by the FSSAI, New Delhi could not be extended to the appellant Assessee, even though the Regulation itself became enforceable after the date of import in question. Therefore, the Assessee could not claim applicability of the same to the import in question on a prior date as a matter of right, even if the principles of adhoc guidelines dated 20.05.2011 was to be applied.

5. Learned Tribunal, in our opinion, was justified in finding that the defects in labeling, as pointed out by the adjudicating authority, were of non-rectifiable character and therefore, the goods in question could not be allowed to be imported into India and therefore re-export was directed. We also note that despite there being no interim order in the present appeal, which is pending since 2013, the directions of the Tribunal to re-export the goods in question before 31.10.2013, have not been complied with by the appellant Assessee. Learned counsel for the Assessee submitted that the goods in question are still lying in the custody of the Customs Department. By the lapse of time, the uselessness and devaluation of these goods in terms of the labeling requirements, might have further gone up and therefore, the direction of re-export does not call for any interference in the present appeal filed by the Assessee.

6. In result, the appeal is devoid of any merit and the same is liable to be dismissed, and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.