2020-TIOL-356-CESTAT-MUM

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH, MUMBAI
COURT NO. 405

Custom Appeal No. 88972 of 2018

Arising out of Order-in-Appeal No. 01/2018, Dated: 12.04.2018
Passed by the Chief Commissioner of Customs, Mumbai

Date of Hearing: 03.09.2019
Date of Decision: 06.02.2020

M/s M C PUNJWANI
7/1, MEGHAL SERVICE ESTATE DEVIDAYAL ROAD
MULUND (W), MUMBAI-400080

Vs

COMMISSIONER OF CUSTOMS
MUMBAI, EXPORT I NEW CUSTOMS HOUSE
BALLARD ESTATE, MUMBAI-400001

Appellant Rep by: Shri V Rama Rao, Adv.
Respondent Rep by: Smt Trupti Chavan, AC (AR)

CORAM: Ajay Sharma, Member (J)

Cus - During the relevant period, a consignment of Stainless Steel Plates was imported by one M/s P.J. Pipes and Vessels Ltd. under two Special Import licenses, as per which the material was to be used for manufacturing thread protectors for pipes to be supplied to M/s ONGC - The imported was allowed exemption under Notfn No 513/86-Cus to import raw materials and components required for manufacture of goods supplied to ONGC - Later, upon investigation, the DRI alleged that the threads protectors supplied to ONGC were not of stainless steel but were of ordinary carbon steel procured locally - Of the total quantity imported, the importer sold a part in the open market and the rest were seized by the DRI - SCN was issued proposing to raise duty demand on the importer and other co-noticees, including the assessee, on grounds of abetment in smuggling SS Plates by giving false consumption certificates - Such proposals were confirmed upon adjudication and the goods were also directed to be confiscated - Penalties were also imposed - Meanwhile, sanction for prosecution was also accorded against the appellant for his role in the abetment - Criminal complaint was filed by the DRI u/s 120B of the IPC - Penalty imposed as per the OiO was paid by the appellant - Later, guidelines were issued for excluding certain offences from purview of Compounding of offences as per the IPC - The appellant filed an application for compounding of offence but the same was not considered on account of the appellant having allegedly committed offence punishable u/s 120B of IPC r/w Section 135 of Customs Act - Hence the application was held to be outside the purview of Compounding of Offences Rules 2005 - Later the CBEC issued another Circular No. **29/2009**
which amended such Rules - The appellant filed another application for compounding of offences, but that too was rejected by the Chief Commissioner of Customs - Hence the present appeal.

Held: The purpose of compounding of offences against payment of compounding amount is to prevent litigation and encourage early settlement of dispute - In the guidelines issued vide Circular No. 15/10/2009 no prohibition has been imposed against deciding the application for compounding of offences which were earlier rejected on the technical ground being outside the purview, nor there is any embargo that if the application has been rejected earlier the same cannot be entertained again even if it falls within the purview of compounding of offences as per the guidelines of 2009 - Perusal of such Circular makes it clear that it is not applicable only qua those case which has been specifically

excluded in that circular/guidelines from the purview of compounding - It is not the case of the appellant that the offence committed is no longer an offence - Admittedly, the earlier application of the appellant was dismissed only due to embargo contained in the circular dated 2005 - Considering the reasons accorded by the Commissioner for rejecting the application, the same would defeat the very purpose of compounding of offence, which is to prevent litigation and encourage early settlement of dispute - Hence the application for compounding of offences can be rejected only on grounds mentioned in the guidelines issued by the Circular dated 2009 and not otherwise - The application filed by the appellant for compounding of offences, falls within the ambit of the Circular of 2009 - Hence the order passed by the Commr is set aside: CESTAT

Appeal allowed

FINAL ORDER NO. A/85159/2020

Per: Ajay Sharma:

This Appeal has been filed from the impugned order dated 12.04.2018 passed by the Chief Commissioner of Customs in Orderin- Appeal No. 01/2018 by which the application filed by the Appellant for compounding of offence under Section 137(3) of the Customs Act, 1962 was dismissed.

2. As per Revenue, the offence committed by the Appellant relates to a case of importation of Stainless Steel Plates (approx- 547,962 MTS & CIF value of Rs. 2,83,85,493/-) by M/s P.J. Pipes and Vessels Ltd., under two Special Import Licences dated 27.07.89. As per the lincences, the imported material was to be utilized for manufacture of thread protectors for pipes to be supplied to the O.N.G.C. The importer claimed and was granted benefit of duty exemption under Notification No. 513/86-Cus dated 30.12.86 which allows import of raw materials and components required for manufacture of goods supplied to O.N.G.C. On certain specific information, D.R.I. investigated the matter and during the course of investigation it was revealed that as required by licences, the threads protectors supplied to O.N.G.C. were not made of Stainless Steel, and the goods supplied to O.N.G.C. were ordinary Carbon Steel threads protectors, which were procured locally by the importer. Out of the total imported quantity of 547,962 MTS, the importer sold 276.928 MTS in the open market and the rest were seized by D.R.I. Based on investigation a Show-Cause-Notice dated 25.04.1991 was issued to the importer and other co-noticees [including the Appellant herein] whereby total duty of Rs. 7,18,95,049/- was demanded from the importer with fine & penalty. The said show cause notice also alleges that the Appellant herein had abetted the act of smuggling of S.S Plates by first certifying the requirement of S.S. Plates, which were not required and then giving false consumption certificate. Adjudicating Authority passed the Order-in-Original dated 26.11.1991 whereby demand for differential duty was confirmed and the same was ordered to be recovered by invoking Section 142 of the Custom Act, 1962. The seized quantity of 271.034 MTS was ordered to be confiscated, with an option to clear it on payment of fine of Rs. Ten Lakhs. Penalty was also imposed on M/s P. J. Pipes & others. By the same Order-in-Original a penalty of Rs. 1,00,000/- (Rupees One Lakh) was imposed on the Appellant which was subsequently reduced to Rs. 10,000/-, vide remand Adjudication Order dated 30.03.2004 passed by Commissioner of Customs(Adjudication), Mumbai. On the other hand, sanction for prosecution was accorded on 16.09.1992 by the then Collector of Bombay under Section 135(1) of the Customs Act, 1962 against the Appellant for his alleged role. Subsequently, a Criminal complaint was filed by DRI, Mumbai under Section 120B of Indian Penal Code 1860 before the Court of Metropolitan Magistrate, Esplanade, Mumbai being Criminal Complaint No. 330/CS/1992. The penalty amount of Rs. 10,000/- as per the Adjudicating Order dated 30.03.2004 was paid by the Appellant on 13/09/2004. Later on in the Year, 2005, compounding and the Offences Rules,2005 were enacted and thereafter vide Circular No. **54/2005-CUS**
dated 30/12/2005 guidelines were issued by the board excluding certain offences from the purview of compounding and offences under the provisions of IPC was also mentioned therein. The Appellant filed an application under the said Rules for compounding of offence on 10/02/2006 but since the offence committed by the Appellant is punishable under Section 120B IPC r/w Section 135 of the Customs Act, 1962 therefore the said application was not considered being outside the purview of the then Compounding of Offences Rules, 2005

3. In the year 2009, CBEC issued another Circular being Circular No. **29/2009**
dated 15/10/2009 by which guidelines for compounding of offences under Customs Act, 1962 were issued amending the Compounding of Offence Rules, 2005 and in the said amendment the exclusion of the offences committed under IPC was deleted. When the Appellant came to know about the said amendment on 10.10.2016, he filed another application for compounding of offence under the amended Rules, 2005. The said application was considered and rejected by the learned Chief Commissioner of Customs vide impugned order dated 12/04/2018. I have heard Learned Counsel for the Appellant and Learned Authorised Representative for the Revenue and perused the case records. The only ground to reject the Application of the Appellant by the Learned Commissioner was that according to him, the earlier compounding Application filed by the Appellant in the year 2006 which was rejected under the provisions of unamended Compounding of Offences Rules, 2005 attained finality and any subsequent change in law does not require any authority to review its own order and re-open the matter which has attained finality.

4. The Board's Circular dated 13/12/2005 by which the offences under IPC were excluded from the purview of compounding relying upon which the earlier application of the Appellant was rejected, was held as ultra virus to the Customs Act, 1962 and rules made therein by the Hon'ble High Court of Judicature at Bombay vide order dated 25/10/2007 in ***Writ Petition No. 1884 of 2007 reported in 2008 (223) ELT 19*** Bom. and it is due to that reason another Circular of 2009 was issued. The purpose of compounding of offences against payment of compounding amount is to prevent litigation and encourage early settlement of dispute. In the guidelines issued vide Circular No. 15/10/2009 no prohibition has been imposed against deciding the application for compounding of offences which were earlier rejected on the technical ground being outside the purview, nor there is any embargo that if the application has been rejected earlier the same cannot be entertained again even if it falls within the purview of compounding of offences as per the guidelines of 2009. A perusal of the said circular/guidelines makes it clear that it is not applicable only qua those case which has been specifically excluded in that circular/guidelines from the purview of compounding. It is not the case of the Appellant that the offence committed by him is no longer an offence. His only plea is that now the offence under the Provision of IPC can also be compounded as per the Circular of 2009. Admittedly, the earlier Application of the Appellant was dismissed only due to embargo contained in the circular dated 2005. If the observation of the learned Commissioner, that the Circular dated 2009, did not mention about the offence committed before the issuance of Circular dated 2009 is accepted then the learned Commissioner is forgetting one thing that the said circular also do not mention that it will be applicable only in cases where the offence is committed after the passing of the aforesaid circular. Going by the reasoning given by the learned Commissioner, the very purpose of compounding of offence i.e. to prevent litigation and encouraged earlier settlement of dispute, will be defeated. The Application for compounding of offences can be rejected only on the grounds mentioned in the guidelines issued by Circular dated 2009 and not otherwise. After going through the guidelines issued by Circular dated 2009, I am of the view that the Application filed by the Appellant for compounding falls within the four corners of the Circular dated 2009 and the same deserve to be allowed.

5. Accordingly, the impugned order passed by the learned Commissioner is set aside and the Appeal filed by the Appellant is allowed with consequential relief if any.

(Order pronounced in the open Court on 06.02.2020)