SUPREME COURT OF INDIA

Commissioner of Customs (Import)

Vs.

Stoneman Marble Industries

C.A.No.4371-4383 of 2004

(D.K. Jain and A.K.Patnaik,JJ.,)

21.01.2011

JUDGMENT

D.K.Jain,J.,

1. Delay in SLP (C) No. 11177 of 2006, SLP (C) No. 11180 of 2006, SLP (C) No. 11181 of 2006, SLP (C) No. 11182 of 2006, SLP (C) No. 12641 of 2006 and SLP (C) No. 14991 of 2006 is condoned and Leave granted.

2. Challenge in this batch of appeals is to the orders passed by the High Court of Bombay dated 3rd July, 2003 in Customs Application Nos. 27-29, 31, 34, 36 of 2002 and 2-10 of 2003; 24 th March, 2005 in Customs Application Nos.17-18 of 2003; 30th March, 2005 in Customs Application Nos.26 and 29 of 2003; 16th March, 2005 in Customs Application Nos. 11-14 of 2003; 6 th April, 2005 in Customs Application Nos. 31-33 and 35 of 2003 and 23rd March, 2005 in Customs Application Nos. 15-16 of 2003. By the impugned orders, the High Court has rejected the applications filed by the Revenue under Section 130A of the Customs Act, 1962 (for short "the Act") on the ground that no question of law arose from the orders of the Customs, Excise and Gold (Control) Appellate Tribunal (for short "the Tribunal").

3. As common questions of law and facts are involved in all the appeals, these are being disposed of by this common judgment. However, to appreciate the controversy involved, a brief reference to the facts in C.A. Nos.4371-4383 of 2004, as being illustrative, would suffice. The respondents-importers were engaged in the business of import of rough marble blocks, classifiable under sub-heading 2515.12 of the Customs Tariff Act, 1975, from various countries such as Italy, Iran, Turkey, Indonesia, Spain, China, Greece etc. in the year 1999. These goods were covered by Exim Code No. 25151200 of ITC [HS] Classification of Export & Import Items 1997-2002, and required a specific licence for importation under the EXIM Policy- 1997-2002. Admittedly, when the imports were made all the respondents, in the instant cases, did not possess the licence as required under the EXIM Policy. Additionally, in some cases, the quantity and price of the imported goods was mis- declared in the bills of entry.

4. The goods imported by the respondents were confiscated under Section 111(d) of the Act. However, the importers were given an option to redeem the confiscated goods on payment of redemption fine, which was fixed, adopting the margin of profit as the basis, under Section 125 of the Act; and penalty levied under Section 112(a) of the Act.

5. Aggrieved, the importers approached the Tribunal in appeal. The Tribunal, in each case, partly allowed the appeal, observing that the facts in each case were similar to those in M/s. Stonemann Marble Industries Vs. Commissioner of Customs (Order No. CI/424-25/WZB/2002 dated 30th January, 2002), and therefore, the redemption fine and penalty was reduced to 20% and 5% of the CIF value respectively.

6. Being aggrieved, the Revenue preferred an application under Section 130A of the Act, stating that the following questions of law arose out of the orders of the Tribunal:

> "1. Whether on the facts and in the circumstances of the case the Tribunal was right in law reducing the redemption fine imposed under Section 125 of the Customs Act, 1962 from Rs.1.01 Crores to Rs. 25,00,000/- and penalty imposed u/s. 112[a] from Rs. 29,40,000/- to Rs. 7,50,000/- in Appeal No. C/1030/01-Mum and in reducing the redemption fine from Rs. 42,84,000/¬to Rs. 7,00,000/- and penalty from Rs. 4,00,000/- to Rs. 2,00,000/- in Appeal No. C/1042/201-Mum by following its earlier orders in the case of Stonemann Marble Industries.
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> 2.Whether on the facts and in the circumstances of the case the Tribunal was right in law in intervening with the redemption fines of Rs. 1.01 crores and Rs. 42,84,000/- imposed under Section 125 by the Commissioner of Customs, Jawahar Customs House, Nhava Sheva and reducing it to Rs. 25.0. 000/- and Rs. 7,00,000/- and with penalties of Rs. 29,40,000/- & Rs. 4.0. 000/- imposed under Section 112[a] by the Commissioner of Customs, Jawahar Customs House, Nhava Sheva & reducing them to Rs. 7,50,000/¬and Rs. 2,00,000/- respectively without examining the facts of the case?"

7. As afore-mentioned, the High Court has, vide the impugned orders, rejected the applications filed by the Revenue on the ground that no question of law arose from the orders of the Tribunal. It has held as follows: "Having heard the counsel on both sides, we are of the opinion that there are no questions of law which can be said to arise out of the order of the Tribunal. It is not disputed by the Revenue that the facts in the case of the Respondents i.e. Marmo Classic and the facts in the case of Stonemann Marble Industries and Jai Bhagwati Impex Pvt. Ltd. are similar. On perusal of the orders passed by the Tribunal in the case of Stonemann Marble Industries and Jai Bhagwati Impex Pvt. Ltd. it is seen (sic.) that the Tribunal has reduced the redemption fine and penalty by taking into account the margin of profits and the demurrage incurred by the importers of the said consignments. It is pertinent to note that the Tribunal in similar circumstances have taken a uniform view to restrict the redemption fine to 20% of the CIF value and penalty to 5% of the CIF value. Under these circumstances, it is evident that the decision of the Tribunal is essentially based on finding of fact. The Tribunal has reduced the redemption fine and penalty by taking into account its

earlier decision as well as the margin profit and the amount of demurrage incurred on the goods. It is not disputed by the Revenue that the CEGAT has power to reduce the redemption fine and penalty. Therefore, in the facts of the case whether the reduction in redemption fine and penalty is justified or not, it is essentially a finding of fact and no material has been adduced by the revenue to establish that the order of the Tribunal is ex- facie perverse, arbitrary & contrary to the facts on record."

8. Hence, the present appeals by the Revenue.

9. Mr. R.P. Bhatt, learned senior counsel appearing on behalf of the Revenue, while assailing the impugned orders contended that the Tribunal could not lay down a standard formula for the computation of redemption fine and penalty as facts and circumstances of each case have to be examined independently. Learned counsel submitted that the Tribunal was only required to examine whether or not the Commissioner had exercised his discretion correctly on the facts and circumstances of each of the cases. Learned counsel thus, asserted that the Tribunal erred in law in laying down an absolute rule in that behalf, giving rise to a question of law.

10. Per contra, Mr. V.M. Doiphode, learned counsel appearing on behalf of the respondents, strenuously urged that the impugned orders deserve to be affirmed in light of the fact that the Revenue has not challenged the Tribunal's finding that the facts in the instant cases were similar to those in M/s. Stonemann Marble Industries (supra). Relying on the decision of this Court in *Collector of Customs, Bombay Vs. Super Fasteners, Marwana (Haryana)*[1], learned counsel contended that it is settled that if the Tribunal in its discretion reduces redemption fine, this Court would not ordinarily interfere with the same.

11. Before adverting to the rival submissions, it would be expedient to make a reference to the provisions of Section 130A of the Act, which read as follows:

> "130A. Application to High Court. - (1) The Commissioner of Customs or the other party may, within one hundred and eighty days of the date upon which he is served with notice of an order under section 129B passed [before the 1st day of July, 2003] (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment), by application in the prescribed form, accompanied, where the application is made by the other party, by a fee of two hundred rupees, apply to the High Court to direct the Appellate Tribunal to refer to the High Court any question of law arising from such order of the Tribunal. (2)The Commissioner of Customs or the other party applying to the High Court under sub-section (1) shall clearly state the question of law which he seeks to be referred to the High Court and shall also specify the paragraph in the order of the Appellate Tribunal relevant to the question sought to be referred."

On a bare perusal of the provisions, it is manifest that it is for the party applying for reference to clearly state the question of law which he seeks to be referred to the High Court

and then it is for the High Court to consider whether any such question of law stated in the application for reference before it should be directed to be referred. (See: Beer Sain Vs. Commissioner of Customs (ICD)2). It is manifest from the format of the questions proposed by the Revenue, extracted in para 6 supra, for reference to the High Court that the Revenue did not assail the Tribunal's finding to the effect that the facts in the instant cases were similar to those in M/s. Stonemann Marble Industries (supra). It is a trite proposition that unless the correctness of facts, on the basis whereof an inference is drawn by the Tribunal, is put in issue, a question of law does not arise from its order.

12. In *Dhirajlal Girdharilal Vs. Commissioner of Income Tax*[3], Bombay a Constitution Bench observed that:

> "5. The question whether or not the Hindu undivided family was doing business in shares transferred to it by the firm, is undoubtedly a question of fact; but if the court of fact whose decision on a question of fact is final, arrives at this decision by considering material which is irrelevant to the enquiry, or by considering material which is partly relevant and partly irrelevant, or bases its decision partly on conjectures, surmises and suspicions, and partly on evidence, then in such a situation clearly an issue of law arises."

13. Similarly, in *K. Ravindranathan Nair Vs. Commissioner of Income Tax, Ernakulam*[4], while dealing with Section 256 of the Income Tax Act, 1961, a Bench of three learned Judges of this Court had held that:

> "7. The High Court overlooked the cardinal principle that it is the Tribunal which is the final fact-finding authority. A decision on fact of the Tribunal can be gone into by the High Court only if a question has been referred to it which says that the finding of the Tribunal on facts is perverse, in the sense that it is such as could not reasonably have been arrived at on the material placed before the Tribunal. In this case, there was no such question before the High Court. Unless and until a finding of fact reached by the Tribunal is canvassed before the High Court in the manner set out above, the High Court is obliged to proceed upon the findings of fact reached by the Tribunal and to give an answer in law to the question of law that is before it.
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> 8. The only jurisdiction of the High Court in a reference application is to answer the questions of law that are placed before it. It is only when a finding of the Tribunal on fact is challenged as being perverse, in the sense set out above, that a question of law can be said to arise."

14. In *Sudarshan Silks & Sarees Vs. Commissioner of Income Tax,* K*arnataka*[5], this Court had observed that:

> "Question as to perversity of the findings recorded by the Tribunal on facts was neither raised nor referred to the High Court for its opinion. The Tribunal is the final court of fact. The decision of the Tribunal on the facts can be gone into by the High

> Court in the reference jurisdiction only if a question has been referred to it which says that the finding arrived at by the Tribunal on the facts is perverse, in the sense that no reasonable person could have taken such a view. In reference jurisdiction, the High Court can answer the question of law referred to it and it is only when a finding of fact recorded by the Tribunal is challenged on the ground of perversity, in the sense set out above, that a question of law can be said to arise."

15. Thus tested, we are in complete agreement with the High Court that the questions raised by the Revenue for reference could not be said to be questions of law. It bears repetition that the Revenue did not specifically challenge the finding of the Tribunal that the facts in the instant cases were similar to those in M/s. Stonemann Marble Industries (supra), which was essentially a finding of fact. Although, we do find some substance in the submission of learned counsel for the Revenue that a standard formula cannot be laid down for imposition of redemption fine and penalty under the aforenoted provisions of the Act and each case has to be examined on its own facts but when a final fact finding body returns a finding that the facts obtaining in each of the cases before it are similar, and such finding is not questioned, levy of redemption fine or penalty uniformly in all such cases cannot be construed as laying down an absolute formula, which is the case here. We are convinced that the Revenue did not discharge its burden under Section 130A of the Act in as much as it did not specifically challenge the Revenue's aforestated finding as being perverse. In this view of the matter, the High Court was justified in declining to issue direction to the Tribunal to make a reference under Section 130A of the Act.

16. In the circumstances and for the foregoing reasons, these appeals, being devoid of any merit, are dismissed and the impugned orders are affirmed. Parties are left to bear their own costs.

Judgment Referred.

[1]*(1997) 10 SCC 0591*
[2]*(2007) 15 SCC 0362*
[3]*AIR 1955 SC 0271*
[4]*(2001) 1 SCC 0135*
[5]*(2008) 12 SCC 0458*