Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL NO. 30 OF 2016

WITH

CUSTOMS APPEAL (ST) NO. 142 OF 2015

WITH

NOTICE OF MOTION (ST) NO. 3490 OF 2015

The Commissioner of Customs (Export) …Appellant

Versus

M/s USMS Saffron Co. Inc. …Respondent

Mr. Pradeep S. Jetly, *for the Appellant in Appeals.*

Mr. V. Sridharan, Senior Advocate, *a/w Mr. Prakash Shah, Mr. Jas Sanghavi, i/b M/s. PDS Legal, for the Respondent in all Appeals.*

CORAM: S.C. DHARMADHIKARI & G.S. PATEL, JJ.

DATED: 15th February 2016

PC:-

1. These two Appeals challenge two orders passed by the Customs, Excise and Service Tax Appellate Tribunal on an Assessees' Appeal.

2. The Revenue is aggrieved by the Tribunal's conclusion and submits that the two questions of law at page 12 of the paper-book of Customs Appeal No. 30 of 2016 are substantial questions of law.

3. Mr. Jetly, learned counsel appearing in support of these Appeals would submit that the 1st Respondent-Assessee imported Saffron vide Bills of Entry as detailed in the Show Cause Notice by availing the benefit of Notification No. 98/2009-CUS dated 11th September 2009 and claimed exemption from payment of duties of customs.

4. The Assessee submitted the licenses styled as Duty Free Import Authorisations (**"DFIA"**). The consignments were cleared at nil rate and by granting the benefit of the Notification. Then, what the Revenue realised on scrutiny of the DFIA that they were issued against export of Assorted Confectionery and Biscuits covered by the Standard Input and Output Norms (**"SION"**). Norms E-1 and E-5 were relied upon. The Authorisations were transferable after redemption. The Assorted Confectionery exported under these Authorisations were covered under SION Sr. No. E-1 in the Handbook of Procedure (Volume 2) (RUD 3). Similarly, the export product Biscuit is covered under E-5 of the same norms in the Handbook of Procedure (Volume 2).

5. Relying upon these norms Mr. Jetly would submit that they came to be amended by the Director General of Foreign Trade. A note was included which read as pointed out at paragraph 3 (ii) of the Appeal paper-book.

6. According to Mr. Jetly as per the note of SION, E-1 for assorted confectionery import of Saffron as food flavour would be allowed subject to the condition that the quantity of Saffron which is actually used in the export product is mentioned in the shipping bill. This provision was applicable with effect from 25th April 2007. Therefore, the exporter was required to disclose the actual quantity used in the export product mentioned in the shipping bill. In the present case, the 1st Respondent failed to prove the actual use of Saffron in the export product and, therefore, the clearance without duty was impermissible. That attracted duty and the benefit of the exemption notification was not available.

7. The 1st Respondent violated Rule 14 of the Foreign Trade (Regulation) Rules, 1993. They have violated the conditions laid down in public Notice No. 84/23.07.2010 (2009-14). For import of Saffron under DFIA, issued against export of biscuits, such suppression of fact was done with an intention to wrongly avail the benefits of duty exemption Notification and to intentionally evade proper Custom duties leviable thereon. It is in these circumstances that the Show Cause Notice was issued and Section 28 of the Customs Act was invoked. That is how the adjudication took place and the adjudication order should have been, therefore, maintained and not interfered with. The order passed on 28th October 2014 by the Adjudicating Authority thus has been erroneously set aside by the impugned order dated 1st May 2015.

8. Mr. Jetly has sought to rely upon the product code F-5 a policy circular No. 72/2004-09 issued by the Government of India,

Ministry of Commerce, DGFT New Delhi and Chapter 4 of the Handbook of Procedures.

9. Mr. Sridharan, learned senior counsel on the other hand would submit that the finding recorded by the Tribunal cannot be termed as perverse. He would invite our attention to paragraph 7.1 onwards of the order passed by the Tribunal and would rely upon the conclusion that if a particular authorisation does not contain an entry for restricting Saffron, then, the Licensing Authority having not made any such insertion or entry, the permission to import goods and clear them without nil rate of duty does not suffer from any perversity or error of law apparent on the face of the record.

10. We have, with the assistance of both counsel, perused this conclusion of the Tribunal. The Tribunal has expressly referred to the exemption notification No. 98/2009. The Duty Free Import is allowed subject to the condition laid down in the notification and particularly that the description, value and quantity of materials imported are covered by the Authorisation and the Authorisation is produced before the proper officer of Customs at the time of clearance for debit.

11. True it is that it relies upon the proviso in the Handbook of Procedures of the Foreign Trade Policy. The Tribunal on perusal of the entire notification found that there is no violation of any of the conditions. Then, the Tribunal from DFIA issued in favour of Laxmi International, the transferor, concluded that there is no suppression or fraud. To be fair to Mr. Jetly, he did not allege any such fraud or suppression either. His submission was restricted to

the requirements stipulated in the norms, namely, SION and according to him without any express reference they have to be adhered to. That is how the Authorisation Scheme would work or else the DFIA is not permissible.

12. The Tribunal recorded a finding of fact that whenever the Revenue had issued licenses styled as Duty Free Import Authorisation, the restrictions appearing in the notifications in question or the Standard Input Output Norms relating the individual items, they were invariably mentioned by the Licensing Authority in the license at the time of issuing or on transfer. If a particular Authorisation does not contain an entry for restricting Saffron, then, by an inferential process and when the Licensing Authority did not think it proper to insert it, it will not be permissible to read it in the same. In terms of duty which is to be imposed and recovered, there is no question of any inference. The provisions enabling imposition and recovery of tax for duty have to be cleared. In the present case, the DFIA in question did not contain any entry restricting Saffron. That is how and in the absence of any further amendments to these Authorisations that the Licensing Authority did not deem it proper to impose any liability. If that has not been imposed and the process by which it has to be read is as above, then, the Tribunal's finding of fact cannot be termed as perverse or vitiated by any error of law apparent on the face of the record.

13. With the aid of the documents that Mr. Jetly would relied upon, a broader or wider view could have been taken. However, no finding of the nature rendered above can be termed as perverse

merely because another rule on the same set of facts is possible or probable.

14. In such circumstances, the questions of law cannot be termed as substantial enabling us to entertain these Appeals. Both the Appeals, therefore, fails as the facts and arguments therein are common, and equally the findings.

15. Both the Appeals are, therefore, dismissed with no order as to costs.

16. In view of disposal of the Appeal, nothing survives in the Notice of Motion and the same is disposed of accordingly.

(G. S. PATEL, J.) **(S. C. DHARMADHIKARI, J.)**