2012 (280) E.L.T. 371 (Kar.)

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

CRYSTAL MARBLE & GRANITE PVT. LTD.
Versus
COMMR. OF CUS., BANGALORE

C.E.A. No. 111 of 2010, decided on 15-9-2011

Demand - Goods transported from EOU to another, both having bonded warehouses - Vehicle carrying the goods collapsing inside factory of recipient/consignee, who refused to give certificate of their receipt on belief that if they did, they would become liable to duty - Mahazar recorded by Central Excise Superintendent stating that entire consignment was destroyed and could not be salvaged - Authorities below Tribunal holding that consignor was not liable to duty, but Tribunal reversing it on grounds that Mahazar was not sufficient for that purpose, and as consignee had refused to give certificate of receipt, consignor was liable for duty under Rule 20(4) of Central Excise Rules, 2002 - *HELD :* Findings of Tribunal were contrary to materials on record, and consignor could not be held liable - It was more so as Notification No. 53/1997-Cus. exempted payment of duty on goods transported from one EOU to another - Section 28 of Customs Act, 1962. *[paras 6, 7, 8]*

Appeal allowed

REPRESENTED BY : Shri Raghuraman V., Advocate, for the Appellant.
Shri Jeevan J. Neeralagi, Advocate, for the Respondent.

[Order per : N. Kumar, J.]. - The appeal is admitted to consider the following substantial question of law :

Whether the Tribunal was justified in interfering with the finding of fact recorded by the authorities below that the consignment had reached the bonded warehouse of the consignee and therefore, there was no liability to pay duty on the part of the consignor?

2. The assessee has preferred this appeal challenging the order passed by the Tribunal holding that the assessee as consignor is liable to pay excise duty as there is no evidence to show that the goods were transported to and stored in the warehouse of the consignee.

3. The Assessee M/s. Crystal Marble and Granite Pvt. Ltd., is a holder of Customs licence. They are engaged in the manufacture and export of finished product of Granite of different sizes. It is 100% export oriented unit. They cleared 1335.451 sq. ft. of polished granite slabs to M/s. S.V.C. Export Pvt. Ltd., another 100% export oriented unit vide an invoice No. 122/2002/03, dated 5-9-2002 and shipping bill dated 5-9-2002. The vehicle carrying the said material capsized and the recipient namely M/s. S.V.G. Exports Pvt. Ltd., filed police complaint at the Station House as well as Central Excise House, Range Superintendent, Mahazar was drawn by the Superintendent of Central Excise. Hosur I.D. Range, stating that the entire consignment of granite slabs were destroyed and broken into pieces that could not be salvaged. The value of the consignment was Rs. 2,29,528/-. A show cause notice came to be issued on 4-3-2003 alleging that the assessee has contravened the provisions of Notification No. 53/1997, dated 5-6-1997 read with Section 72(1)(d) of the Customs Act, 1962 (hereinafter referred to as the Act). The allegation was that they failed to account for the above said quantity of 1335.454 sq.ft. of polished granite to the satisfaction of the proper officer and therefore, they are liable to pay the customs duty of Rs. 1,30,445/- and they were asked as to why penalty should not be imposed.

4. The assessee gave a reply on 21-3-2003. They contended that the accident took place inside the factory premises to M/s. S.V.G. Exports Pvt. Ltd. They intimated the concerned Customs officer to arrange for the Mahazar. The consignment had met with the accident inside the factory premises and they were not willing to give the certificate based on the belief that if, the same is issued, they might have to pay the duty. They also contended that their unit was a 100% EOU and they have performed their part of the contract in pursuance of the Notification dated 5-6-1997. They were exempted from payment of any duty. The Deputy Commissioner of customs after considering the said explanation and also taking into consideration the Rules 4, 6, 8, & 20 of the Central Excise Rule 2002 held that the assessee has not contravened the provisions of Rule 20(4) of the Excise Rules 2002 (for short the Rules) Thereafter it is held that no duty is payable by them and stopped the proceedings. Revenue appeal also came to be dismissed. Against those two orders, they preferred an appeal before the Tribunal. The Tribunal found fault with the approach of the authorities and held that the records do not disclose complete abandonment of the goods in question. Mahazar report would not be sufficient to absolve the assessee from payment of duty. Relying on Rule 20(4) of the Rules, it held that the receipt of the goods in the warehouse of the assessee is a pre-requisite and that not being established as the consignee has not issued any certificate to that effect the consignor is liable to pay the duty. Therefore, it set aside the order and remanded the matter to the Deputy Commissioner for calculating the duty and issuing a demand notice. Against the said order, the present appeal is filed.

5. We have heard the learned counsel appearing for the parties.

6. Rule 20 on which reliance is placed reads as under :

Rule 20. Warehousing provisions. - (1) The Central Government may by notification, extend the facility of removal of any excisable goods from the factory of production to a warehouse, or from one warehouse to another

warehouse without payment of duty.

(2) The Facility under sub-rule (1) shall be available subject to such condition, including penalty and interest, limitation, including limitation with respect to the period for which the goods may remain in the warehouse, and safeguards and procedure, including in the matters relating to dispatch, movement, receipt, accountal and disposal of such goods, as may be specified by the Board.

(3) The responsibility for payment of duty on the goods that are removed from the factory of production to a warehouse or from one warehouse to another warehouse shall be upon the consignee.

(4) If the goods dispatched for warehousing or re-warehousing are not received in the warehouse, the responsibility for payment of duty shall be upon the consignor.

Sub-Rule (1) of Rule 20 provides that Central Government may by notification extend the facility of removal of any excisable goods from the factory of production to a warehouse, or from one warehouse to another warehouse without payment of duty. The Notification No. 53/1997 provides for exemption to specify goods imported for production or goods of exported to or for use in 100% EOUs. Clause 14 of the said notification reads as under :

"14. The Assistant Commissioner or Deputy Commissioner or Customs, may, allow supply or transfer of capital goods imported or procured by a hundred percent Export Oriented Unit or articles manufactured by such unit to another hundred percent Export Oriented Unit or to a unit in the Free Trade Zone or Export Processing Zone or Special Economic Zone for the purpose of use in the said unit or for further manufacture and export, subject to such conditions and limitations as may be prescribed by him in this behalf."

7. That apart by exercise of the power conferred by Sub-Rule (1) of Rule 20 of the Rules of 2001, the Central Government has extended the facility of removal of excisable goods specified in column No. 2 of the Notification No. 46/2001-C.E. (N.T.), dated 26-6-2001 from the factory of production to or from one warehouse to another warehouse without payment of duty. Sl. No. 2 specially apply to the assessee in question. The assessee is not liable to pay any duty. It was contended that the provisions contained in Sub-Rule (4) of Rule 20 of Rules states that, if the goods dispatched for warehousing or re-warehousing are not received in the warehouse, the responsibility for payment of duty shall be upon the consignor. Therefore, the question for consideration is merely because the consignee did not issue the certificate as contemplated under the law showing that the goods are received from the assessee and is stored in their warehouse and hence, Sub-Rule (4) of Rule 20 of the Rules is attracted. Here, the facts are not in dispute. The assessee, which is a 100% export oriented Unit has transported 1335.454 sq. ft. of polished granite to the consignee, which is yet another 100% Export Oriented Unit by name M/s. S.V.G. Exports Pvt. Ltd. Both the consignor and consignee have private bonded warehouses under Section 68 of the Customs Act and they are given registration under Rule 9 of the Rules. The Mahazar drawn by the Customs authorities clearly shows that the entire consignment of granite slabs, after it had reached the bonded warehouse of the consignee, near the gate capsized and the granite slabs were found to be destroyed and were broken into pieces. Nothing can be salvaged. Fearing the liability to pay duty, the consignee has not issued the warehousing certificate. It is in those circumstances, authorities issued show cause notice and after the assessee placed all the relevant material, they were satisfied that the assessee has transported the consigned goods to the consignee and it reached the bonded warehouse of the consignee. Therefore, there is no liability under Sub-Rule (4) of Rule 20 on the part of the assessee/consignor to pay any duty on the aforesaid goods. That is precisely what the Original Authority and the Appellate Authority have held keeping in mind the statutory provisions. However, the Tribunal proceeds on the assumption that the material on record do not disclose that the consignment reached its destination. It also do not disclose that the consignment came to the consignee and therefore it is to be held that there is violation of provisions and Sub-Rule (4) of Rule 20 attracts the provisions.

8. In the light of what is stated above, the undisputed facts, the finding recorded by the Tribunal, is contrary to the material on record and statutory provisions, therefore it cannot be sustained. Accordingly, we pass the following Order :

(a) Appeal is ***allowed.***

(b) The impugned order passed by the Tribunal is hereby set-aside.

(c) The substantial question of law is answered against the consignee and in favour of the assessee.

(d) The orders passed by the First Appellate Authority is set-aside

(e) No costs.