

**2014 (2) ECS (279) (Tri. -Kol.)**

**Customs, Excise & Service Tax Appellate Tribunal**

**East Zonal Bench, Kolkata**

**COMMISSIONER OF CUSTOMS (PORT), KOLKATA**

*Vs*

**M/S. SESA GOA LTD.**

**Date of Hearing & Decision: 12.12.2013**

Appearance:

Shri S.P. Pal, AR

for the appellant

Shri R. Patodia, FCA

for the respondent

**CORAM**

Dr. D.M. Misra, Hon'ble Judicial Member

Dr. I.P. Lal Hon'ble Technical Member

*Order No. SO/71533-71566/2013*

**Prima facie, we find that the impugned Orders passed by the Ld. Commissioner (Appeals) is not supported by any reasoning, in not accepting the Circular issued by the Board clarifying the assessment practice to be followed after 01.01.2009. Thus, in our opinion, the Revenue could not be able to establish a strong prima facie case on merit for staying the operation of the impugned Orders-in-Appeal. Since the issue involved here relates to determination of assessable value, taking into consideration the benchmark price of China Chamber of Commerce of Metals, Minerals and Chemicals (CCCMMC) along with the dispute of applicability of FOB value or cum-duty price, and there is no data available on the implication of duty against the said issues, therefore, in our view, operation of the entire impugned O-i-A relating to the aforesaid Stay Applications also to be stayed. (Para 4).**

**Per Dr. D.M.Misra:**

These Applications are filed by the Revenue against five Orders-in-Appeal seeking stay of the said Orders. A common issue i.e. for export duty, whether FOB price be treated as the Transaction value or as Cum-duty price, after 01.01.2009, has been involved in all these Stay Applications, except Applications at Sl. Nos.3, 5 and 9 (i.e. Appeal Nos.C/A/287, 289 & 318/2010), wherein, in addition to the above issue, other issues relevant for determination of value of exported goods, are also involved.

2. Ld. AR for the Revenue submits that the impugned order of the Id. Commissioner (Appeals), is ex-facie bad in law being contrary to

the statutory provision as well as the principle of law settled by the Tribunal. It is his grievance that the Ld. Commissioner has neither substantiated nor recorded detailed reasons for adopting the FOB price as cum-duty price, when Sec.14 of Customs Act,1962 clearly prescribes otherwise. The Id. AR also submits that in view of judgment of this Tribunal in the case of Sesa Goa Ltd. Vs. CC,CE&ST, Goa, 2012 (277)ELT 105 (Tri.-Mumbai) and the Circular No.18/2008-Cus., dated 10.11.2008 issued by the Board, the FOB price should be taken as the transaction value and cannot be considered as a cum-duty price. Advancing the apprehension of the Revenue, he has submitted that if the impugned Orders of the Id. Commissioner (Appeals) are not stayed, which are contrary to the principle of law settled by the Tribunal and the said Circular issued by the Board, and also contrary to the statutory provisions, duty collected on the FOB Value after 01.01.2009, would have to be allowed as refund to the Respondents, which is not due to them.

3. Ld. Chartered Account for the Respondents, on the other hand, submits that aggrieved by the afore said decision of this Tribunal in Sesa Goa case(supra), they have preferred an SLP before the Hon'ble Supreme Court, which has been admitted. However, he fairly accepts that no stay has been granted by the Hon'ble Supreme Court against the said judgment of the Tribunal. Also, he has fairly accepted that in view of the said decision of the Tribunal and the Circular of CBEC dated 10.11.2008, no refund after 01.01.2009, had been sanctioned by any other Customs House/Commissionerate.
4. Heard both sides and perused the records. Prima facie, we find that the impugned Orders passed by the Ld. Commissioner (Appeals) is not supported by any reasoning, in not accepting the Circular issued by the Board clarifying the assessment practice to be followed after 01.01.2009. Also, prima facie, the impugned Orders are contrary to the principle of law laid down by the Co-ordinate Bench of the Tribunal at Mumbai on the same issue. Thus, in our opinion, the Revenue could able to establish a strong prima facie case on merit for staying the operation of the impugned Orders-in-Appeal. Regarding the three stay Applications mentioned above, besides the issue of cum-duty price, other ancillary issues are also involved. On a query from the Bench, the Id. Advocate for the Respondent could not furnish any bifurcation of the duty, attributable towards the cum-duty price issue and valuation on comparable prices of China Chamber of Commerce of Metals, Minerals and Chemicals (CCCMMC) as adopted. Since the issue involved in the above-mentioned three Stay Applications relates to determination of assessable value, taking into consideration the benchmark price of China Chamber of Commerce of Metals, Minerals and Chemicals

(CCMMC) along with the dispute of applicability of FOB value or cum-duty price, and there is no data available on the implication of duty against the said issues, therefore, in our view, operation of the entire impugned Orders-in-Appeal relating to the afore-said three Stay Applications, also to be stayed. In the result, operation of all the aforesaid Orders appealed against, is stayed. Stay Petitions filed by the Revenue are accordingly allowed.

(Dictated and pronounced in the open court.)