Commissioner of Customs Vs. Jyoti Rubber and Plastic

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-28-2000

Reported in : (2000)(70)ECC261

Judge : K Sreedharan, N T C.N.B.

Appellant : Commissioner of Customs

Respondent : Jyoti Rubber and Plastic

Judgement :

1. This is an appeal of the Revenue against Order-in-Original No. 23/92 dated 10.4.1992 of the Collector of Customs, Bombay. The dispute in the adjudication related to import of Polypropylene Moulding Powder, self-adhesive tape and craft paper. The dispute was that the goods had been imported and sought to be cleared in violation of provisions of DEEC pass-book Scheme. The appeal has raised three points in support of the contention that the Order-in-Original is not legal or proper. The first ground is that in similar cases involving DEEC Pass-books, the Collector had passed adjudication orders which are at variance with the impugned order. The second submission is that 24.75 metric tonnes of Polypropylene for which M/s. Polyethylene International had filed Bill of Entry as actual user, could not have been imported by that party as they had imported the goods without obtaining SSI Certificate, the SSI Certificate being dated 3.1.1991 and the import being on 30.11.90. The third ground is that the respondents in the case had already sold part of the consignment of 75.30 metric tonnes of single sided craft paper to one Sudhir Jain of M/s. Sumant Prasad & Sons, which

constituted violation of the DEEC Pass-book Scheme. The appeal contends that the Collector had wrongly appreciated the facts and had held that if at all there was only an intention to sell the materials, while it was on record through the reply filed by Advocate for Shri Sudhir Jain that the purchaser had entered into an agreement for purchase of the material in the bona fide belief that M/s. Jyoti Rubber and Plastic Industries Pvt. Ltd. would not be violating any law by selling the imported material.

2. When the case came up for hearing today, the learned Departmental Representative reiterated the points made in the appeal. As against this, the learned Counsel for the respondents submitted that the objections raised in the appeal are not tenable in the facts of the case. He submitted that the other cases treated by the Revenue as similar were not comparable to the present case at all. In those cases, the importers had conceded that violations had been committed by them, while in the present case no such admission existed and the importers had successfully contested the charge before the Collector. With regard to the sale of 24.75 metric tonnes of Polypropylene, the learned Counsel for the respondent pointed out that M/s. Polyethylene International, who had filed the Bill of Entry for the clearance of the goods, had already obtained SSI registration certificate before the filing of the Bill of Entry. Further, the goods were sought to be cleared on payment of duty and not duty free under Pass-book Scheme.

Since no duty free clearance was sought, the importer cannot be treated under the Pass-book Scheme at all. He, therefore, submitted that the department's contention on this point does not have any basis. The learned Counsel pointed out that the appeal seems to have been filed on a wrong understanding of the reply filed by counsel for Shri Sumant Prasad Jain. He took us to the narration at internal page 6 of the order impugned wherein the Collector has observed that the payment was made for purchase of the paper after processing by M/s. Jyoti Rubber and Plastic Industries Pvt. Ltd. and not for purchase of the paper as such. He emphasised the undermentioned portion of the order in this context. It reads-- Shri S.K. Beri on behalf of M/s. Sumat Prashad & Sons in his reply says that no show cause notice has been issued directly to his client. It is further argued that the policy provides the importers easy access to imported inputs for exports production. The policy provides that in cases where the export obligation has been partially or fully met before making any import against the licence but after receipt of application for the Pass-book the manufacturer exporter may utilise the replenished materials for further export/domestic production subject to actual user condition. It is claimed that the endorsement in favour of M/s. Jyoti Rubber & Plastics was made after fulfilment of export obligation and, therefore, his client entered into an agreement for purchasing processed material. He has not violated any law by agreeing to purchase goods after processing it. The allegation relating to purchase of Pass-book, booking of goods by them etc. are denied, as is the allegation 25.95 tonnes was sold by M/s. Jyoti Rubber to Sudhir Jain all payments have been made by cheque and process material is not supplied to Sudhir.

The learned Counsel pointed out the as against the above observations in the impugned order, the appeal states that the Advocate for Sudhir admitted that they entered into an agreement for purchase of material in the bona fide belief that M/s. Jyoti Rubber & Plastic Industries Pvt. Ltd. would not be violating any law by selling the imported material. Learned Counsel submitted that it is clear from the conflicting versions in the impugned order and in the appeal that this contention has been raised by the Revenue on completely incorrect understanding of the facts.

3. It goes without saying that orders cannot be compared and grievances made, unless facts, issues for decision and evidence were the same in the cases compared. Cases cited by the Revenue are found to be different from the impugned order, as in those cases the importers had conceded the violations. With regard to the contention regarding sale of Polypropylene, it is observed that the importer was an actual user.

The goods were also being cleared on payment of duty. The Revenue, therefore, cannot have a grievance against the Collector's order permitting such clearance. As regards the evidence with regard to the consignment of paper, it is observed that the same evidence has been stated entirely in a contrary way in the impugned order and in the appeal of the Revenue. The Revenue's objections can be attributed only to misunderstanding of the facts. Sale of processed goods was not prohibited under the Pass-book Scheme. Therefore, the Collector could not be faulted for holding in favour of the importer.

4. In the light of what has been stated above, we are of the opinion that the Revenue has failed to make out a case for setting aside the order of the Collector. The appeal fails and is rejected.