

Bharati Telecom. Ltd. Vs. Commissioner of Customs

Bharati Telecom. Ltd. Vs. Commissioner of Customs

SooperKanoon Citation : sooperkanoon.com/18918

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-16-2000

Reported in : (2001)(130)ELT133TriDel

Appellant : Bharati Telecom. Ltd.

Respondent : Commissioner of Customs

Judgement :

1. This appeal arises from the order passed by the Commissioner of Customs, Nhava Sheva dated 7-5-99 confirming duty liability on the appellants to the tune of Rs. 52,41,600.00 and demanding interest at the rate of 24% per annum under Section [28AA] of the Customs Act, 1962 and penalty of equal amount of duty under Section 114A of the Customs Act, 1962.
2. The matter relates to import of various consignments by the appellants under the Advance Licence Scheme and duty free clearances of imimported goods under Notification No. 203/92-Cus.. dated 19-5-92.
3. Brief facts are : Appellants imported polypropylene under the Advance Licence Scheme and availed of duty free clearance of the goods claiming exemption under Notification No. 203/92. They had also taken Modvat credit on the inputs under Rule 56/57A of the Central Excise Rules. The Department alleged that the appellants were not entitled to the benefit of duty free imports under the notification since condition (V)(a) of the notification provided that the export obligation should have been discharged by exporting the goods manufactured in

India and in respect of which no credit at inputs stage is availed of under Rule 56A/57A. The Department also alleged the violation of provisions of Para 12 of the Hand Book Procedures of EXIM Policy - 1992-1997. By Show Cause Notice dated 3-9-97, the Department also alleged that the appellants had suppressed the fact that Modvat credit had been availed of on the inputs used in the manufacture of exported goods for wrongly availing duty free benefits against the licence.

4. In reply to the SCN, the present appellants contended that the Advance Licence was obtained by them on 1-6-93 and they had completed the export obligation by July, 1993; that they had got the DEEC Book endorsed after obtaining Bank realisation certificate; they had got redemption of their Bond from the Office of the Director-General of Foreign Trade in December, 1993; that Circular issued by the CBEC dated 3-1-97 had relaxed the provisions of Notification No. 203/97 in cases where the exporter reverses the Modvat credit incorrectly availed of by him with interest at the rate of 20% of the amount of Modvat credit.

Therefore, where reversal of Modvat credit and payment of interest is completed by 31-1-1997, no demand of Customs duty leviable will be payable. Further, they had already reversed the Modvat credit and rectified the error in their records even before the date of issue of the CBEC Circular dated 3-1-97. Appellants therefore requested for the cancellation and dropping of the charges made in the SCN.5. The Commissioner, however, found that the Amnesty Scheme declared by the Ministry of Finance Circular No. 285/1/97-Cus., dated 10-1-97 provided that the importer should have reversed Modvat credit and paid interest there on before 31-1-97, if he was to escape duty liability and penalty. The Commissioner found that the appellants had failed to fulfil the conditions of the Amnesty Scheme on two Grounds. Firstly, there was a short fall in the amount required to be reversed and secondly, the interest payment had taken place on 7-2-97, i.e., on a date subsequent to the deadline provided in the Amnesty Scheme. He held that if an importer intends to take the benefit of the provisions of the Amnesty Scheme he should fulfil the requirements and conditions of the Scheme fully and on time. The requirements not having been fulfilled, the benefit of Amnesty Scheme was not available to the appellants. The exemption under Notification would also be not available to them since they had availed of Modvat credit which was contrary to

the provisions of condition (V)(a) of Notification No.203/92.

6. Appearing for the appellants. Id. Counsel Shri J.P. Kaushik argues that the entire proceedings should be considered to be void and not maintainable ab initio for the reason that the SCN and the impugned order relates to a consignment covered by a Bill of Entry which is not relatable to the goods in question. He refers to the Annexure to the SCN which shows the Bill of Entry No. as 175/64 whereas the actual Bill of Entry relating to the import was 001773 dated 16-9-93. Since no imports under the said Bill of Entry had taken place under the Advance Licence obtained by the appellants, Id. Counsel submits that the entire proceedings are vitiated and is liable to be set aside on that ground alone. This apart, Id. Counsel has drawn attention to the fact that the imports against the licence had taken place during the period 7-9-93 to 16-9-93 and exports had been completed between 9-6-93 and 22-7-93 under three different shipping bills. He further points out that both the SCN as well as the impugned order had wrongly alleged that the licence was subsequently endorsed for transferability without disclosing the wrongful availment of the benefits of Notification No. 203/92. Id.

Counsel has submitted that in the case of the appellants, no such endorsement as to transferability of the licence had been obtained nor had the appellants transferred the licence at any stage. There was therefore no question of any act of omission or commission on the part of the appellants by way of getting an endorsement for transfer of the licence attracting the provisions of Section 111(o) of the Customs Act, 1962 as alleged in the SCN. As regards availment of duty exemption in violation of condition (V)(a) of Notification No. 203/92, Id. Counsel submits that the appellants had availed of the benefit of the Exemption Notification under a bona fide belief that they were entitled to do so and when they realised their mistake, they had on their own reversed the Modvat credit and therefore there was no revenue loss. In such cases, there was no justification for demanding duty or for imposing penalty. In support of this contention, he relies on the Supreme Court decision in Chandrapur Magnet v. CCE 1996 (81) E.L.T. 3 (S.C.). It is further argued that the Government had given Amnesty to the importers in cases where Modvat credit had been reversed and interest had been paid for the amount. The Amnesty Scheme announced by the Government on 10-1-97

covered cases of identical type and the appellants were entitled to the benefits accruing under the Amnesty Scheme. This should have been extended to the appellants since they had reversed in January/February, 1994, the Modvat credit taken on the imports imported during the year 1993. Id. Counsel also argued that for calculating the actual credit involved in respect of finished goods in the domestic tariff area exports made against value based licence as well as against quantity based licence have to be taken into account for arriving at the ratio of the quantity of inputs used in the manufacture of finished goods exported against the licence. The formula given in the Amnesty Scheme did not take into account the exports made against the quantity based licence. This was a serious defect and for working out the Modvat credit amount to be reversed the formula given under the Amnesty Scheme should not have been adopted.

7. As regards the demand of interest, Id. Counsel submitted that the demand based on Section 28AA of the Customs Act, 1962 would not be applicable in the case of appellants since during the period of dispute, the said provision did not exist in the Statute Book. The same would apply also to the imposition of statutory penalty.

8. Appearing for the Respondent Commissioner, Shri M.P. Singh, Id. JDR, submits that mention of Bill of Entry No. 175/64 in the SCN and in the impugned order was a result of a clerical error and in this connection, he refers to Annexure 'C at Page 23 of the Appeal Papers which shows that '175/64' as IGM No. and not as Bill of Entry No. Since there was no dispute about the actual quantity of Polypropylene imported by the appellants, the wrong mention of the Bill of Entry number may not be taken as a discrepancy going to the root of the matter or as a ground for dismissing the impugned order. As regards the claim of the appellants that their case is covered by the Amnesty Scheme declared by the Government on 10-1-97, Id. JDR contends that admittedly the said scheme was announced on 10-1-97 and Para 3 of the scheme clearly provided where credit had already been reversed, the exporters should deposit the interest amount calculated in the manner prescribed in Para 2 thereof before 31-1-97. In the case of the appellants it is an admitted fact that they had not taken any action pursuant to the Amnesty Scheme nor had they complied with all the conditions of the scheme. The appellants

therefore cannot claim any benefit from the said Amnesty Scheme nor can equate themselves with persons who had submitted particulars under the format given in the Amnesty Scheme. The appellants were clearly outside the scope of the Amnesty Scheme.

Appellants themselves have not rebutted the contravention of the provisions of Para (V)(a) of Notification No. 203/92 at the time of import of the goods on 16-9-93. No plea for allowing the benefit of the said Notification was therefore maintainable. He submits that taking of Modvat credit on the imported goods clearly disentitled the appellants from the benefits of duty exemption under Notification No. 203/92. The duty demand of Rs. 52,41,600/- was therefore fully justified.

9. As regards demands of interest and imposition of statutory penalty, Id. JDR, reiterated the findings of the Commissioner in the impugned order.

10. Considered the submissions of both the sides and perused the record.

11. As regards the question of discrepancy relating to the correct mention of Bill of Entry Number in the Annexure to SCN/impugned order, we find from Page 23 of the Appeal Papers (Annexure 'C' reproducing Part 'D' of DEEC) that No. 175/64 relates to IGM. Id. JDR has explained that the said number has been wrongly mentioned as the Bill of Entry number in the SCN/impugned order due to Clerical error. We are satisfied with the said explanation, since there is no dispute about the factum of import of the quantity of Polypropylene by the appellants which is the subject matter of the dispute before us. As regards contention of the appellants that they had satisfied the conditions of the Amnesty Scheme announced by the Government in terms of Circular dated 10-1-97 and therefore they should have been granted the benefit of the Scheme and no duty should have been demanded, we observe that the said Scheme was announced on 10-1-97 and in terms of Para 3 of the Circular the exporter has to deposit the interest amount calculated in the manner prescribed in Para 2 before 31-1-97 and a calculation sheet regarding reversal of the amount as well as the interest should have been submitted to the jurisdictional Asstt. Commissioner in the format given under Para 5. There is nothing on record to show that the said procedure had been followed by the

appellants. This apart, we do not also find merit in the claim of the appellants that since the Amnesty Scheme has been announced for the benefit of exporters working under the Value-based Advance Licence Scheme, the reversal of the credit made by them in 1994 should have been treated on par with the compliance of the conditions of the Amnesty Scheme by exporters who had complied with the requirements of the Amnesty Scheme. An Amnesty Scheme is by its very nature a special dispensation and is intended to be operated strictly within the four walls of the Scheme and in accordance with the time frame, conditionalities and other procedural requirements. It appears from the provisions of the Scheme that it requires quantification of the Modvat credit in a particular manner and as per the formula specified in the Circular. In addition, interest at the rate of 20% on the amount of Modvat credit retained by the exporters for the period between the date of export and the date of reversal was also required to be calculated and deposited before 31-1-97. Even assuming that the appellants were covered by the Amnesty Scheme, their claim for the benefit of the Scheme cannot be allowed since, admittedly, all the conditions of the Scheme have not been complied with by them in the manner specified under the Scheme. We therefore find no merit in the plea of the appellants that the Amnesty Scheme dated 10-1-97 has been wrongly denied to them.

12. Since there is no dispute about the availment of Modvat credit on the inputs by the appellants, it is clear that Para (V)(a) of Notification No. 203/92 has been contravened. This clearly disentitles the appellants from the benefit of the said notification. The duty demand raised in the SCN and confirmed by the impugned order is therefore clearly sustainable and legal.

13. As far as the imposition of statutory penalty and the demand of interest is concerned, we find that the provisions relating to both these were incorporated in the Customs Act, 1962 much after the period in dispute. Therefore, that part of the impugned order which confirms the statutory penalty and demand of interest is set aside. The appeal is allowed to the aforesaid extent and disposed of in the above terms.