

Subal Export Vs. Commissioner of Customs,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-08-2002

Reported in : (2002)(141)ELT687TriDel

Judge : A T V.K.

Appellant : Subal Export

Respondent : Commissioner of Customs,

Judgement :

1. Shri K.K. Anand, learned Advocate submitted that M/s. Subal Export are merchant exporter; that they submitted a shipping bill on 28-9-2000 for the export of 100% Acrylic blanket under DEEC Scheme; that the impugned goods were manufactured by M/s Esskay International and the value declared was Rs. 10,02,497/-; that further on examination by the Customers, it was found that only four bales out of 221 bales were containing 100 % acrylic fiber blankets whereas in the remaining bales, the percentage of acrylic fiber was only 27% approx. The Commissioner Customs confiscated the entire consignment valued at Rs. 2,38,840/- with an option to redeem the same on payment of fine of Rs. 1.25 lakhs and he also imposed a penalty of Rs. 10,000/-. Learned Advocate further submitted that the goods were not manufactured by the Appellants and they were only acting as merchant exporter; that as held by the Tribunal in the case of Sunahri International v. CC (G), Mumbai [2001 (129) E.L.T. 480 (T) = 2001 (42) RLT 935 in case of export under DEEC Scheme and where draw back claim is not made, mis-declaration of proportion of synthetic fiber in the yarn does not amount

to contravention of any prohibition and goods cannot be confiscated under Section 113(d) or (i) of the Customs Act. Finally, learned Advocate submitted that the redemption fine and penalty are on very high side.

2. Countering the arguments, Shri H.C. Verma, learned DR, submitted that it has not been disputed by the Appellants that 21 bales were containing the blankets which had only 27.1 acrylic fiber as against declaration of 100% acrylic fiber blanket and there was mis-declaration as well as overvaluation of the goods and the same are liable for confiscation; that considering the over-valuation of the impugned goods the redemption fine imposed is not on higher side at all and penalty is very reasonable. He also submitted that the Larger Bench of the Tribunal in the case of *Om Prakash Bhatia v. CC, Delhi* [2001 (127) E.L.T. 81] has held that over invoicing of the goods for exportation is an offence under the Customs Act. Accordingly, the goods are liable for confiscation and penalty is imposable on the Appellants.

3. I have considered the submissions of both the sides. The fact of bales being not 100% acrylic fiber and consequently their value being less than 10 lakhs has not been disputed by the Appellants. The goods are being exported by them being the merchant exporter and, therefore, the fact that the goods were manufactured by somebody else is not materials. It was their duty to check the goods before exporting the same. As held by the Larger Bench of the Tribunal in the case of *Om Prskash Bhatia (supra)* exporter of any goods while presenting the shipping bill has to make and subscribe to a declaration at the foot of such shipping bill as to the truth of its contents. As defined in Section 2(41) of the Customs Act, 'Value' in relation to any goods means the value thereof determined in accordance with the Provisions of Section 14(1) of the Act. The Larger Bench, therefore, held that over invoicing of the goods exported was an offence. Accordingly, I held that the impugned goods in the present matter are liable for confiscation as they were over valued. However, considering all the facts and circumstances of the case. I reduce the redemption fine to Rs. 75,000/-. The penalty of Rs. 10,000/- is not high by any stretch of imagination considering the fact that out of 225 bales only four bales contained the declared goods and value was declared wrongly. The penalty as such is upheld. The Appeal is thus partly allowed.

