

itc Ltd. Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Oct-25-2002

Reported in : (2003)(85)ECC337

Judge : S Peeran, R K Jeet, P Chacko

Appellant : itc Ltd.

Respondent : Commissioner of Customs

Judgement :

1. This appeal by M/s. ITC Ltd. is directed against Order-in-Original No. 16/98-CAU, dated 2-2-98 despatched on 16-3-1998, of the Commissioner of Customs, Chennai in which the Id. Commissioner has confirmed the demand of Rs. 69,78,348.87 (Rupees sixty-nine lakhs seventy eight thousand three hundred and forty eight and paise eighty seven only) under proviso to Section 28(1) of the Customs Act, 1962 and the same was adjusted against the amount of Rs. 69,78,348.87 (Rupees sixty-nine lakhs seventy eight thousand three hundred and forty eight and paise eighty seven only) already paid by the appellant under protest. He also imposed penalty of Rs. 69,78,348.87 (Rupees sixty-nine lakhs seventy eight thousand three hundred and forty eight and paise eighty seven only) on the importers under Section 114A of the Customs Act, 1962.

2. Shri Sasidharan and Ms. Mythili, Advocates appeared before us and submitted that the charges levelled against them in respect of 31 advance licences have been dropped by the Id. Commissioner as not maintainable. He has confirmed the

charges levelled against them in respect of only one advance licence where imports had proceeded the exports and they had allegedly sold the imported goods in the open market. They further submitted that there is no nexus between the export and import of the goods and they had imported these goods before discharging the export obligation. They invited our attention to para 11 of the Order-in-Original and submitted that the imported goods have been used in the manufacture of their product which had been ultimately exported. They further submitted that they had fulfilled export obligation even in respect of the 32nd advance licence that is Licence No. 405040 dated 16-3-1995. They further submitted that the findings of the Id. Commissioner that they had sold imported materials for profit in the local market and used some other materials for manufacturing goods which were exported later on is devoid of evidence. They also invited our attention to para 4.6 of the Order-in-original and also to Annexure (A) on page 26 of the paper book in which all the details about the advance licence in dispute have been given and they have exported the material under the DEEC scheme and have fulfilled the export obligation. They further submitted that the Bill of Entry dated is from 21-3-1995 to 5-5-1995, in other words, they have imported goods in respect of this advance licence on 20-3-1995 onwards whereas they have exported few consignments prior to the import of the raw materials. Export has also taken place after the import of the raw material against this advance licence. Therefore it is not correct to say that the export obligation was fulfilled before the import of raw materials and the raw material has been imported after fulfilling the export obligation. Ld. Advocate however admitted that some of the exports have taken place after the import of the raw material but that does not disentitle them to avail the benefit of Notification No.80/95-Cus., dated 31-3-1995. They also invited our attention to Condition No. (vi) of the proviso on which it has been mentioned that the exempted material shall not be disposed of or utilised in any manner except for utilisation in discharge of export obligation. Since the export obligation has been discharged in full they are entitled for exemption. They also invited our attention to para 7 of the Order-in-original which contains their reply submitted by them in reply to show cause notice issued to them and in which they have stated that: (i) there is no violation of conditions 1 of Notification No. 80/95 wherein the specifications in the present case GSM and the characteristics of the

board are significantly different from what was imported and what was actually used.

(ii) The scheme envisages only the following two requirements i.e.

(a) the export should be realised in convertible foreign currency and (b) the exporter must meet the minimum value addition criteria.

(iii) So far as the allegation made on match inners, uncoated paper board was used while the import was of export coated paper board. In respect of match outers, domestic coated paper board of higher GSM was used. The appellant are of the view that liberal interpretation should be taken since the ingredient required for manufacture of matches is paper board and by using paper board there has been a substantial compliance of the input output norms. The choice of a paper board depends on the market conditions, the price offered and the nature of the export commodities. They had also submitted that it is not necessary that the goods imported must be physically incorporated in the export product.

(iv) The appellant have not disposed/sold the imported material. The materials were consumed and used in the factory of the company and export obligation in respect of the licence has been subsequently fulfilled and the proceedings realised in full. They had also pointed out that the term 'disposal' used in the notification normally refers to loan, lease, sale and the appellant had applied for and hired the licence in the capacity of the exporter.

(v) Any penal provisions can only be made prospective and cannot be made retrospective. This principle has been repeatedly laid down by the Hon'ble Supreme Court and followed by the appellate Tribunal.

They had therefore submitted that it was not permissible to invoke Section 114A for the purpose of penalty for transaction that have taken place prior to 28-8-1996 as the provisions of Section 114A were incorporated in the statute with effect from 28-8-1996. This issue in imposing penalty under Section 114A has been settled by the Hon'ble Supreme Court in the case of Elgi Equipments v. CC as reported in 2001 (128) E.L.T. 52 (S.C.) and the Hon'ble Supreme Court has held that penalty

is not imposable for the demands raised and pertaining to the period prior to 28-8-1996.

They therefore requested that the proceedings are required to be dropped.

3. Ld. SDK Shri G.S. Menon invited our attention to the facts in paras 4.2; 4.5.1; 4.5.2 and 4.5.3 and submitted that M/s. ITC are engaged in the business of safety matches as a merchant exporter and for this purpose they had obtained several advance licences (quantity based) for duty free import of raw materials required therefore, with an obligation to export Indian safety matches as stipulated in said licence. The matche boxes (inners and outers) meant for packing safety matches were made at the factory of M/s. ITC Ltd. as Tiruvottiyur till July, 1995. Thereafter, the match outers and inners were got manufactured on job work basis. As per the directions of M/s. ITC Ltd. the job workers despatch the match inners and outers to various match units at Sivakasi who would fill match sticks. The safety matches thus manufactured were exported by M/s. ITC Ltd. He further submitted that the investigation conducted by the Revenue reveal that (i) paper board (coated) imported by them are not at all required for the manufacture of match inners and (ii) in respect of match outers, paper board (coated) imported by them do not correspond in technical characteristic to the coated paper board actually used for export production. He further submitted that as regard paper/paper board, the appellant as per advance licences are entitled to import "paper/white board/paper board coated/uncoated other than ivory board." The advance licence further stipulates that only relevant item actually used/to be used in export shall be allowed. Ld. SDR further submitted that in the instant case the appellant had imported only coated paper board. However, the importers were found to have used coated paper board for match outers only. In respect of match inners, they used only uncoated paper board.

In other words, inasmuch as the licence allows import of only relevant item actually used/to be used in the export, the coated paper imported so far as it related to match inners are concerned, is not eligible for exemption "duty free" under Notification No. 80/95, dated 31-3-1995.

The aspect of coated paper board not being used in the match inners is evident not only from the statement of various personnel of the company including its Vice President, but also from their internal documents maintained at their Tiruvottiyur factory. In addition to the above facts that only coated paper board had been used for manufacture of match inners, investigation further revealed that M/s. ITC Ltd., Chennai had been importing only coated paper board duty free under several licences in a continuous manner though they were using uncoated paper board for the manufacture of inners; however, the paper board imported by them had thus never been used for any export production but in the manufacture of other packing materials viz. cigarette/ liquor packaging manufactured in their same factory. The investigation also revealed that the coated paper used in the manufacture of match outers has come not from imported source but from domestic manufacturer viz.

Balakrishna Paper Mills, ITC Bhadrachalam Paper Boards, etc.

4. Ld. SDR also invited our attention to para 3.4 of the impugned order wherein Shri R.S. Parthasarathy, Stores Clerk, Raw Material Warehouse of the appellant company in his statement dated 6-12-96 had stated inter alia that he had been working as Stores Clerk for the last one and half years and his job was to receive raw materials like coated/uncoated paper boards, polyester films, adhesives, etc. and to issue them against indents raised by user departments. As regards match boxes, M/s. ITC Ltd. got them manufactured only from the job worker outside their factory for which coated paper boards of 285 GSM obtained from M/s. Balakrishna Industries were sent to M/s. Srinivasa Fine Arts, Sivakasi for manufacture of match box outer and uncoated paper boards of 260-285 GSM obtained from M/s. ITC Bhadrachalam Paper Boards Ltd. were sent to M/s. Manujothi Printers, Tondiarpet for manufacture of match box inners and they had never used imported paper boards for match boxes. Shri R.S. Parthasarathy, Stores Clerk had also stated that the main imported varieties of paper boards are 200 to 220 GSM supplied by FINN Board, Finland and Gothia, Sweden and they do not maintain separate stock account for DEEC import, however separate stock account is maintained for all other imports. Along with his statement he also submitted a computer print out of stock account in 10 pages in respect of paperboards, both indigenous, and

imported duly signed by him. Id.

SDR also invited our attention to para 7 of the Order-in-Original and invited our attention to sub-para (iii) mentioned in para 7, in which the appellants had admitted, so far as the allegation made on match inners that uncoated paper board was used while the import was of coated paper board. In respect of match outers, domestic coated paper board of higher GSM was used and the appellant had requested for liberal interpretation since the ingredients required for manufacture of matches is paper board and by using paper board, there has been a substantial compliance of the input-output norms. The appellant had also submitted that the choice of a paper board depends on the market conditions, the price offered and the nature of the export commodities and it did not mean that the goods imported must be physically incorporated in the export product. The appellant had also submitted that the term 'required' only implied that the goods imported must be a category that had been used in the export product. Id. SDR also invited our attention to para 8.3 of the impugned order in which Id.Commissioner has noted that insofar as the allegation regarding the 32nd licence namely No. 405040, dated 16-3-1995 is concerned the party admitted that the fact exports in effect had not preceded the imports for which they crave the indulgence of the department and request that this may be condoned for the simple reason that the export obligation was completed immediately thereafter.

5. In counter Id. Counsel invited our attention again to their submissions made in para 7 which was in reply to the show cause notice issued on 13-8-97 which have already been discussed in para 2 supra.

6. We have carefully considered the submissions made by both sides and have perused the records and are of the considered opinion that Id.Commissioner had in fairness dropped the charges levelled against the appellant in respect of 31 advance licences as the Id. Commissioner had found that the appellant had fulfilled certain export commitments and thereafter obtained the advance licence and resorted to importing of some goods. In other words, the export had preceded the imports. In such a situation, it is well settled that there need be no cause for any correlation between the exports and imports and therefore held that the

department's case relating to the imports connected to 31 advance licences are not sustainable.

7. Ld. Commissioner has confirmed the demands of Rs. 69,78,348.87 (Rupees sixty-nine lakhs, seventy eight thousand, three hundred and forty eight and paise eighty seven only) under proviso to Section 28(1) of the Customs Act, 1962 in respect of only 32nd licence No. 405040, dated 16-3-1995 and adjusted the above amount which was paid by them under protest, where the appellant had imported certain goods prior to fulfilling any export obligation. The various issues like the type of materials imported and the type of export shown against such imports have to be gone through. While doing so it was noticed that the appellant had not used the imported material for the manufacture of the goods exported. So far as the allegation made on match inners of uncoated paper board, these imports was of coated paper board. In respect of match outers domestic coated paper boards of higher GSM was used.

8. The admissions made by the appellants that the materials were consumed and used in the factory of the company and export obligation in respect of the licence has been subsequently fulfilled and sale proceed realised in full is not at all relevant to the issue because the imported items were never used for the manufacture of the items which were required to be exported. M/s. ITC Ltd., Chennai, the appellant were engaged in the business of export of safety matches as a merchant exporter and for this purpose they had obtained several advanced licences (quantity based) for duty free import of raw materials required therefore, with an obligation to export Indian safety matches as stipulated in the said licences. The match boxes (inners and outers) meant for packing safety matches were made at the factory of M/s. ITC Ltd. at Tiruvottiyur till July, 1995. Thereafter, the match outers and inners were got manufactured on job work basis. As per the directions of M/s. ITC Ltd., the job workers despatch the match inners and outers to various match units at Sivakasi who would fill match sticks. M/s. ITC were found to have completed export obligation in full prior to importation. Further, the investigation conducted by the Revenue revealed that (i) paper board (coated) imported by them were not at all required for the manufacture of match inners and (ii) in respect of match outers, paper board. (coated) imported by them did not

correspond in technical characteristic to the coated paper board actually used for export production. As regards paper/paper board, the appellant as per advance licences were entitled to import "paper/white board/paper board coated/uncoated other than ivory board." The advance licence further stipulates only relevant item actually used/to be used in export shall be allowed. Whereas in the instant case the appellant had imported only coated paper board. However, the importers were found to have used coated paper board for match outers only. In respect of match inners, they used only uncoated paper board. In other words, inasmuch as the licence allowed import of only relevant item actually used/to be used in the export the coated paper imported so far as it related to match inners was not eligible for exemption "duty free" under Notification No. 80/95 dated 31-3-1995. The aspect of coated paper board not being used in the match inners is evident not only from the statement of various personnel of the company including its Vice President, but also from their internal documents maintained at their Tiruvottiyur factory. Besides, it is evident from the records that only uncoated paper board had been used for manufacture of match inners.

Investigation further revealed that M/s. ITC Ltd., Chennai had been importing only coated paper board duty free, under several licences in a continuous manner though they were using uncoated paper board for the manufacture of inners; however, the paper board imported by them had thus never been used for any export production but in the manufacture of other packing materials viz. cigarette/liquor packaging manufactured in their same factory. It also came to light that the coated paper board used even in the manufacture of match outers has come not from imported source but from domestic manufacturers viz. Balakrishna Paper Mills, ITC Bhadrachalam Paper Boards, etc. It would therefore be seen that in respect to advance licence No. 405040 dated 16-3-1995 issued to M/s. ITC Ltd. they were found to have imported materials viz. coated paper board, printing ink, industrial glue and water based coating between March 1995 and August 1995 and used the same in the manufacture of other packing materials viz. cigarette packaging, liquor packaging, etc. in their factory. Thus they have diverted the exempted materials for the purpose other than for using them for manufacture of goods which were to be finally exported in discharge of export obligation. It would therefore be seen that so far as licence No. 405040 dated 16-3-1995 is concerned,

the importers had not only indulged in diversion of the materials imported duty free in the manufacture of other packing materials (other than match inners and outers) which is not specified as resultant export products in the said advance licence but also indulged in such diversion before fulfilling the export obligation under the said licence in full. Besides in respect of coated paper board imported under this licence, the appellant had not used the same in the export obligation of match inners. Further the technical characteristics of the coated paper board imported was found to have been used in the manufacture of other packing materials, viz. cigarette and liquor packs and not for match outers/inners for which required GSM was 250 to 350 GSM.⁹ In view of the above facts and circumstances, the importers M/s. ITC Ltd. Chennai have to pay duty foregone in full which works out to Rs. 69,78,348.87 inasmuch as M/s. ITC had imported materials viz. coated paper board, printing ink, industrial glue and water based coating duty free under DEEC scheme (quantity based) with an obligation to export safety matches but failed to fulfill the conditions stipulated in the notification No. 80/95 dated 31-3-1995.

10. As regards their plea that they are not liable to penalty under Section 114A of the Customs Act, we are inclined to accept their plea since the provisions of Section 114A were incorporated with effect from 28-8-1996 whereas the goods imported under dispute were between the period 20-3-1995 to 5-5-1995 as has been held by the Apex Court in the case of Elgi Equipments v. CC as reported in 2001 (128) E.L.T. 52 (S.C.). Therefore the order of imposing penalty of Rs. 69,78,348.87 under Section 114A is set aside. Subject to above modification, the order of the Id. Commissioner is otherwise sustained. Ordered accordingly.

11. [Contra per : S.L. Peeran, Member (J) (Oral)]. -I have carefully gone through the order prepared by my learned brother. I am agreeable with Id. brother's order for setting aside the penalty under Section 114A of the Customs Act but I am not agreeable for confirmation of duty amount of Rs. 69,78,348.87 as computed in the show cause notice. The appellant's prayer for setting aside this amount is required to be accepted on following grounds and the impugned order is required to be set aside fully :- (i) the show cause notice proceeded on the basis of violation of the terms of the notification No. 80/95-Cus, dated 31-3-1995 as stated in para 4.6 of

the show cause notice that in respect of advance licence No. 405040 dated 16-3-1995, the appellant was found to have imported the materials as stated therein for the periods also mentioned therein and used the same in the manufacture of other packing material viz. Cigarette Packaging, liquor packaging etc. in the same factory but the exports against the said licence were shown to have been fulfilled during the period noted therein.

(ii) Appellants took the plea that there was no violation of the terms of the notification and that they have not sold the items in the market but have utilized the same in terms of the export licence. The details of the replies are already available in the reply to the show cause notice. Ld. Commissioner proceeded to confirm the duty only with regard to licence No. 405040, dated 16-3-1995. The total number of licences involved in the case is 32 in number. The demand of duty of Rs. 69,78,348.87 is for these 32 licences. The demand is not restricted to licence No. 405040 dated 16-3-1995. The Commissioner has arrived at the finding in para 11 of his order that in respect of licence No. 405040 dated 16-3-1995 the appellants have sold the imported material for profit in the local market and used other materials for manufacture of goods which were exported later on. Ld. Counsel pointed out that the grounds taken by Ld. Commissioner for confirming the duty as recorded in para 11 is totally in variance with the charges brought out in the show cause notice.

(iii) I have carefully considered this plea and find lot of force.

The show cause notice was for violation of 32 advance licences by which the total duty liability of Rs. 69,78,348.87 was computed, while the Commissioner has given a finding with regard to violation of only one advance licence for which entire duty amount is not applicable. Further, there is no evidence on record or alleged in the show cause notice of appellants having sold the materials in respect of advance licence No. 405040 dated 16-3-1995. The Commissioner in para 11 of his order has given only presumptive finding and there is no clear cut evidence with regard to sale of imported materials in the local market.

(iv) Appellants contended that the entire material was utilized in the factory and therefore the notification has not been violated. On careful consideration, this plea

is acceptable and requires to be upheld. The notification does not lay down specific criteria for use of the imported material. In the absence of any such specific clauses, it cannot be said that there is a violation of the terms of the notification. Therefore, the arguments raised were in two folds with regard to the order being beyond the terms of the show cause notice, and the notification having not been violated. Both these points are sustainable and requires to be upheld. As a result the duty amount cannot be confirmed. I hold that the impugned order is required to be set aside.

12. Appeal is allowed on both counts with consequential relief, if any, as per law.

In view of difference of opinion arisen between the Members, the following question arises for consideration of Third Member :- "Whether the appeal is required to be partly allowed with regard to penalty imposed only, and duty is required to be confirmed as held by Member (Technical) Shri Jeet Ram Kait.

The appeal is required to be allowed by setting aside the duty and penalty as held by Member (Judicial) Shri S.L. Peeran." Sd/- 13. [Order per: P.G. Chacko, Member (J)]. - Examined records and heard both sides.

14. The Commissioner of Customs confirmed a demand of duty of Rs. 69,78,348.87 P against the assessee under Section 28(1) of the Customs Act and adjusted even amount already paid under protest by the party against the demand so confirmed. The learned Commissioner also imposed penalty of equal amount on them under Section 114A of the Customs Act.

The learned Member (Tech) of the regular Bench which heard the appeal upheld the order of the Commissioner on the duty aspect but set aside his order in relation to penalty. On the other hand, learned Member (Judl.) set aside the order of the Commissioner in toto and allowed the appeal. Hence the point of difference to be resolved by me as Third Member.

15. The question before the Adjudicating Authority was whether the appellants had violated the conditions of Notification No. 80/95 by availing duty exemption on the raw materials imported under 32 DEEC licences for the purpose of manufacture of

final products to be exported in terms of the Notification. That authority found in favour of the importer in respect of 31 of the licences. But, in respect of the import of raw materials made under the advance licence No. 405040 dated 16-3-1995, the learned Commissioner found that the raw materials procured from indigenous sources were utilized for the manufacture of the inners and outers of match boxes exported in discharge of the export obligation under the Notification; that the paper board which was imported duty-free under the licence was different from the particular variety of paper board required for the manufacture of the inners and outers of match boxes and that the paper board so imported had been diverted to the local market. The learned Commissioner, however, found that the export obligation under the said licence No.405040 had been fulfilled by the party. On the basis of his findings, the learned Commissioner confirmed the demand of duty (amounting to Rs. 69,78,348.87) on the raw materials imported under the advance licence No. 405040. Same amount of duty which had already been paid under protest by the party was adjusted against the demand so confirmed. The learned Commissioner also imposed a penalty of equal amount on the assessee under Section 114A of the Customs Act. The penalty has been set aside by the regular Bench. The point of difference is in relation to duty only.

16. The learned Counsel for the appellants and learned SDR for the Revenue have reiterated their respective submissions made before the regular Bench. The learned Counsel today seeks to emphasise the fact that any diversion of imported raw materials to the local market for sale had not been alleged in the show cause notice. For this sole reason, the Commissioner's finding of diversion of imported raw material to local market cannot be sustained. The learned Counsel further submits that the Adjudicating Authority having already found in relation to 31 advance licences that, where exports preceded imports, any correlation between the two was not necessary for the benefit of the Notification, has recorded a contradictory finding in relation to the remaining advance licence No. 405040, which is erroneous. He submits that the advance licence No. 405040 was a licence for import of paper board for the purpose of manufacture of inners and outers of safety match boxes and that minute characteristics or properties such as GSM of paper board were not specified in the licence. It was enough if the raw material imported was paper board of whatever GSM for the purpose of export of

inners and outers of match boxes in terms of the licence and the Notification. The learned Counsel points out that the Adjudicating Authority itself has found that the appellants had fulfilled their export obligation in terms of the licence. Once the authority is satisfied about the fulfillment of export obligation, the learned Counsel argues, it is not open to the Adjudicating Authority to make any enquiry as to the technical characteristics or properties of the particular paper board imported under the licence. Importation of paper boards irrespective of GSM, under the licence, is an admitted fact. Fulfilment of export obligation corresponding to such importation is also an admitted fact. Therefore, the learned Counsel argues, there is no ground for denial of the benefit of exemption under the Notification in respect of the imported raw material.

17. The learned SDR for the Revenue refers to the entries in the Handbook of Procedures under the relevant Exim Policy (1-4-1992 to 31-3-1997) and submits that as per the input-output norms mentioned at Sl. No. 39 of the Handbook, only the particular item of paper board actually to be used in export product shall be eligible for exemption from duty on importation. He submits that the specific item in the instant case was paper board of GSM not below 250 and not above 350 whereas the raw material imported under the advance licence No. 405040 was a different variety of paper board i.e. paper board of GSM less than 250 and more than 350, which was not useful for the manufacture of inners and outers of safety match boxes. The learned DR submits that the imported raw material should have been both qualitatively and quantitatively compatible with the exported product. Non-fulfilment of this requirement under the Exim Policy amounted to breach of the conditions of the exemption notification. The exemption was not available to the paper board of GSM less than 250 and more than 350 under the advance license No. 405040 read with the input-output norms laid down under the Exim Policy.

18. With reference to the above submissions of the learned SDR, the learned Counsel relies on Board's Circulars No. 4/93, dated 4-3-1993 and No. 1/94 dated 5-1-1994. The learned Counsel argues that, by virtue of the clarification issued by the Board, it was not open to the Adjudicating Authority to meticulously correlate imported raw materials, in terms of the technical characteristics and properties, to

export product under the DEEC Scheme.

19. I have examined the submissions. I find that the dispute is one in relation to the raw material's imported under the advance licence No.405040 dated 16-3-1995. The allegation of the department was that the imported paper board was other than paper board of GSM 250 to 350 required for the manufacture of inner and outer of match-boxes to be exported in discharge of export obligation under the Notification and therefore, the correlation required under para (vi) of the Notification had not been accomplished by the appellants. It is the argument of the learned Counsel that it is sufficient if the raw material specified in the DEEC licence has been imported and utilized for the manufacture of the final product specified in the licence. In the instant case, the raw material mentioned in the licence is paperboard. No particular kind/variety of paperboard has been specified. Therefore, utilization of the paperboard of whatever GSM imported under the advance licence, in the manufacture of the final product exported is sufficient compliance with the terms of the Notification. In support of this submission, the learned Counsel has relied on the clarificatory circulars of the Board. He particularly refers to the following clarification: "The materials permitted import are those which are required for a particular class of export product. That does not mean that the goods imported must be physically incorporated in the export product. It only implies that the goods imported must be of a category that could have been used for the export product." It is further clarified thus : "Even though exempted materials are imported before discharge of export obligation, they need not be necessarily used in the manufacture of export product. However, the same cannot be disposed off in any other manner before discharge of export obligation." "Once the licence has been transferred by the office of Director General of Foreign Trade, the field formations should not seek, to establish a close nexus with reference to the quantity and technical specifications of inputs vis-a-vis the export product. However, care should be taken to allow import of inputs usable in the export product as endorsed in Part E of the DEEC, keeping in view the description given in the licence." The learned Advocate would also rely on the following clarification contained in Circular No. 1/94:- "It is, therefore, once again reiterated that whereas minute details of the kind indicated in the preceding para may not be gone into establish a close nexus, it will be necessary to establish a nexus

between the inputs and the export product keeping in view the commercial use of the inputs imported and the normal manufacturing process for the product exported." 20. The gist of the above provisions of the circulars is that the goods imported should be shown to be goods of a kind which are commercially known to be used in the export product and are covered by the description of inputs in the DEEC licence. In the instant case, the description of raw material in the licence is 'paper board'. The raw material imported is admittedly paper board. The department has no case that the appellants did not use paper board in the export products. As per the circulars, it is not necessary for the departmental officers to establish a dose nexus with reference to quality and technical specifications of inputs vis-a-vis the export product for allowing the benefit of the exemption notification. The learned Counsel has relied on the decisions in the cases of Standard Industries Ltd. v. CC, Trichy - 2001 (136) E.L.T. 124 (T) and Dolphin Drugs (P) Ltd. v. CC, Mumbai [2000 (115) E.L.T. 552 (T) = 1999 (35) RLT 80]. On a perusal of the decisions cited, I find that this Tribunal in the context of examining predecessor notifications took the view that export obligation should be held to have been discharged even where raw material different from that specified in the licence was utilized in the export product. I find that in the instant case, the importer stands on a better footing inasmuch as they imported only that raw material (paper board) which was mentioned in the advance licence and they admittedly used it in the export products (inners and outers of match boxes). The finding of the learned Commissioner that the appellants discharged their export obligation under Licence No. 405040 is not under challenge either.

21. As rightly pointed out by the learned Counsel, there was no allegation in the show-cause notice that any imported raw material was disposed of in the open market by the appellants. The finding of the Commissioner that the raw material imported under the particular advance licence was diverted to the open market is unwarranted as it is beyond the scope of the show cause notice. I set aside that finding.

Having set aside that finding of the Commissioner, nothing appears to be surviving against the appellants in this case inasmuch as fulfilment of export obligation under the particular advance license is a finding already given by the Adjudicating

Authority and not challenged by the department. That finding is enough ground to hold that the exemption under the Notification is available to the party in respect of the raw material imported under the said licence.

22. For the above reasons, I have to concur with the conclusion drawn by the learned Member (Judicial) in his order, while making it clear that I do not share his observations to the effect that the duty demanded in the show cause notice on account of alleged violation of 32 licences was Rs. 69,78,348.87 P. (The total demand was to the tune of over Rs. 1.28 crores. Demand was confirmed by the Commissioner only to the extent of Rs. 69,78,348.78 P which was in relation to one of the licences only). Accordingly, I hold that the appellants are entitled to the exemption under Notification No. 80/95 in respect of the inputs imported under the DEEC license No. 405040 dated 16-3-1995 and hence not liable to pay the duty or penalty.

In terms of majority order, the impugned order is set aside and appeal allowed with consequential relief, if, any, as per law.Sd/- Sd/-(Jeet Ram Kait) (S.L. Peeran)Member (T) Member (J)Dated 25-10-2002 Dated 25-10-2002

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