Sarla Polyester Ltd. Vs. Commissioner of C. Ex. and Cus.

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SooperKanoon Citation : sooperkanoon.com/29302

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-11-2002

Reported in : (2003)(159)ELT323Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Sarla Polyester Ltd.

Respondent : Commissioner of C. Ex. and Cus.

Judgement :

1. The applications are for waiver of deposit of duties and penalties as follows :Name Duty PenaltySarla Polyester Ltd. Rs. 33,48,060/- Rs. 33,48,060/- Madhusudan Jhunjhunwala - Rs. 15 lakhsSatishkumar Sharma - Rs. 5 lakhs.Dinesh Chandra Pandey - Rs. 2 lakhsM.M. Sanghavi - Rs. 2 lakhsHindustan Cotton Co.

- Rs. 5 lakhsGopal Bhagwan Dutt Sharma - Rs. 1 lakhJaipur Golden Transport - Rs. 50,000/-Co. P. Ltd. 2. The demand for duty is on yarn of different types like textured, lycra etc. manufactured by Sarla Polyester Ltd., the assessee, a 100% export oriented unit, on the ground that it has not paid duty on the goods cleared in the domestic tariff area. Madhusudan Jhunjhunwala, is its Chairman, and Satishkumar Sharma, Dineshchandra Pandey and Gopal Bhagwan Dutta Sharma are its employees. Hindustan Cotton Co., of which M.M. Sanghavi is a division, had been penalised because it was shown as consignor in the transport documents issued by Jaipur Golden Transport Co. Pvt. Ltd. which carried the goods. That carrier has been penalised for transporting the goods.

3. All the applicants, except Jaipur Golden Transport Co. Pvt. Ltd. are represented by Prakash Shah. The carrier was represented by Mr. Prem Hinduja, its executive.

4. The counsel for the assessee does not at this stage deny that the goods out of the materials imported without payment of duty in terms of the relevant exemption Notification 1/95 were cleared into the domestic tariff area without payment of duty. He however contends that the goods so cleared were not permitted to be sold. Therefore, he says that the demand for duty should be computed as provided in Sub-section (1) of Section 3 of the act and not by the proviso under that sub-section. In that event the duty payable would amount to Rs. 11.19 lakhs approx. He further contends that the benefit of the exemption contained in Notification 125/84 would then be available. He however offers as an evidence of bona fide to deposit, in addition to the deposit already made of Rs. 9.89 lakhs, Rs. 5 lakhs towards duty and penalties imposed on the company and its employees. He cites the judgment of the Supreme Court in SIV Industries ltd. v. CCE [2000 (117) E.L.T. 281 (S.C.) = 2000 (37) RLT 583] and the decision of the Tribunal in Kuntal Granites Pvt. Ltd. v. CCE [2001 (132) E.L.T. 214 (Tribunal) = 2001 (43) RLT 829].

5. The departmental representative contends that it would be absurd to say that a person who claims, as a person who unauthorisedly cleared the goods to the domestic tariff area is not required to pay duty, whereas another who sells such goods in pursuance of a law validly given permission has to pay substantial amount of duty and the provisions of the law should not be construed in support of such a proposition. He points out that it precisely on the basis of the decision in Kuntal Granites Pvt. Ltd. v. CCE [2001 (132) E.L.T. 214 (Tribunal) = 2001 (43) RLT 829] has been referred for reconsideration.

6. We see the justice of this point. At the same time, however, it has to be kept in mind that the words in the statutes and in the notification are to be given the plain meaning attached to them. The circumstances under which Notification 125/84, which exempts from duty goods manufactured or produced in 100% export oriented unit, other than those which are allowed to be sold in the domestic tariff area are unclear and the notification itself does not furnish any clue to the rational

behind its issue. It cannot be accepted that the plain meaning of a notification should be discarded and that the Tribunal should interpret in a manner more beneficial to the Revenue than the Government has to say in the notification. Apart from this, the decision in Kuntal Granites Pvt. Ltd. v. CCE [2001 (132) E.L.T. 214 (Tribunal) = 2001 (43) RLT 829] is subsisting and the referring bench itself has acknowledged it by granting waiver.

7. In these circumstances, we accept the offer made by the counsel for the applicants and on deposit of Rs. 5 lakhs within a month from the receipt of, this order, we waive deposit of the duties and penalties and stay their recovery.

8. So far as the carrier is concerned, the plea made by its employee that it acted in good faith and there is nothing to show that it was aware that the goods that it carried had been cleared without payment of duty, has prima facie to be accepted. The only reason for imposing penalty on it is that the consignor was stated to be somebody other than the assessee. The mere fact that the carrier knew that the goods were of the assessee, who booked them in someone else name at the request of the assessee's employee cannot prima facie, in the facts of this case, justify imposition of penalty on it. We, accordingly, waive deposit of the penalty imposed on it and stay its recovery.