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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-08-2003

Reported in : (2003)(162)ELT536Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Ram Pamnani

Respondent : Commissioner of Customs

Judgement :

1. Ram Pamnani, the appellant before us, is proprietor of Shalu Textile Industries. This firm applied in 1992 for issue of advance licences permitting to import polyester filament yarn and polyester partially oriented, on the ground that export of goods required such a licence.

The licensing authority issued to it three licences, two in 1992 and the third in 1994. Utilising these licences, the appellant imported the yarn in 1993 and 1994 and cleared them without payment of duty and claimed exemption contained in Notification 204/92. Subsequently, the Customs authorities concluded that the appellant had manipulated in its favour, in the export promotion copy of the shipping bills which it had furnished to the licensing authority as proof of its export, weight in one case and the composition of the fabrics in two other cases. On these facts being reported to the licensing authority, a notice was issued to the appellant proposing to suspend these licences. By order passed on 29-11-1995, the Deputy Director General of Foreign Trade passed orders cancelling the licences. On appeal to the Joint Director General of Foreign Trade, that authority found that the order of cancellation was not in consonance with principles of natural justice, since the notice issued to the appellant proposed to suspend the licences and not cancel them, and the appellant was also not given adequate opportunity to represent its case. It therefore passed orders on 25-9-1998 setting aside the cancellation and directing issue of fresh notice within six weeks and adjudication of the notice within eight weeks. From the affidavit affirmed by Ram Pamnani on 4-3-2002, it emerges that no such notice had been issued to the appellant. Counsel for the appellant contends that this position continues as of today.

2. In the meantime, following the cancellation of the licences, the Customs department issued notices demanding duty on the goods that the appellant imported, as also on goods imported by Dynamic Textile Industries, the purchaser of one of the licences issued to the appellant, on the ground that the benefit of the exemption contained in the notification was not available, in the absence of a valid import licence and also proposing confiscation of the goods as unauthorised, and penalty on the appellant. The Commissioner passed orders on 30-12-1996 confirming the demand for duty, ordering confiscation of the goods, permitting to redeem them on payment of fine and imposing penalty. Hence this appeal.

3. The sole contention of the counsel for the appellant is that, by virtue of the application of the ratio of the judgment of the Supreme Court in East India Commercial Co. Ltd. v. C.C., Calcutta -1983 (13) E.L.T. 1342, the order cancelling the licence only takes effect after it is issued and will therefore not affect the validity of the licence insofar as imports are made thereafter. It would not have any effect on the goods which were imported before the licence was cancelled. He also contends that as of today the licence had not been cancelled, the order of the adjudicating authority cancelling the licences having been set aside. Therefore the licences continued to be valid and remain valid today.

4. The departmental representative emphasises that the Customs department has established beyond doubt that the appellant carried out manipulations in the export document but for which it would not have been licences. He also relies upon the judgment of the Madras High Court in East West Exporters v. ACC - 1993 (68)

E.L.T. 319 and the judgment of the Bombay High Court in Roche Products Ltd. v. N.B.Sonavane, Collector of Customs, Bombay and Another -1987 (32) E.L.T.547 and the Tribunal's decision in Kunal International v. CC - 2001 (138) E.L.T. 132. He attempts to argue that the judgment of the Supreme Court in East India Commercial Co. Ltd. did not deal with the situation where a licence was cancelled by an order issued by the licensing authorities.

5. In its judgment in UOI v. Sampat Raj Dugar - 1992 (58) E.L.T. 163, the Supreme Court said, with regard to the goods under consideration by it, "Clause (d) [of Section 111 of the Customs Act] contemplates an import which is contrary to any prohibition imposed either by the Customs Act or any other law for the time being in force. No such prohibition can be pleaded in this case since on the date of the import the said goods were covered by a valid import licence. The subsequent cancellation of licence is of no relevance nor does it retrospectively render the import illegal. [East India Commercial Co. Ltd. v. The Collector of Customs, Calcutta - 1983 (13) E.L.T. 1342 (S.C) = 1963 (3) SCR 338 at 372]." 6. Even if the licences were to be cancelled, such cancellation would not have rendered the import illegal prior to such cancellation. In this case, as we have noted, the cancellation of the licences having been set aside by the appellate authority, and further action as directed by that authority not having been taken, the consequence follows that the licences, after their issue, continue to be, and are, valid. In fact, the case can be decided on this ground alone.

7. We will now consider the three decisions that the departmental representative relies upon. The judgment of the Madras High Court in East West Exporters v. ACC - 1993 (68) E.L.T. 319, holding that a forged or falsified licence is void ab initio is irrelevant to the facts before us, where no such forgery or falsification of the licence is alleged. The judgment of the Bombay High Court in Roche Products Ltd. v. N.B. Sonavane, Collector of Customs, Bombay and Anr. - 1987 (32) E.L.T. 547 held valid any order of confiscation of imported raw materials which were imported on a redeclaration as the importer was an actual user. We do not see the relevance of that decision to the case before us. The Tribunal in its decision in Kunal International v. CC - 2001 (138) E.L.T. 132 declined to follow Sampat Raj Dugar on the ground that the Supreme Court's judgment was not concerned with

case of fraud, This is in fact not correct, going by the Bombay High Court's judgment in K. Uttamlal (Exports) Pvt. Ltd. v. UOI - 1990 (46) E.L.T. 527, which was not noticed by the Bench which passed the order, that even if a fraud is established, the principle that would apply is laid down in East India Commercial Corporation, that a licence obtained by fraud or forgery is void ab initio. The same view has been taken by that court in its judgment in Bansilal Jesasingh v. UOI - 1988 (36) E.L.T. 52.

8. It has therefore to be held that the goods were validly imported in terms of the licence that was issued.