

Punsumi Foils and Components Ltd. Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-29-2003

Reported in : (2003)(89)ECC815

Judge : A T V.K., P Chacko

Appellant : Punsumi Foils and Components Ltd.

Respondent : Cc

Judgement :

1. This appeal is against the order of the Commissioner of Customs confirming against the appellants a demand of Customs duty of over Rs. one crore (with interest thereon at the rate of 20% per annum) under Section 28(2) of the Customs Act read with Sections 72(1) and 61(2) of the Act, confiscating the imported goods under Section 111(o) of the Act with option for redemption thereof on payment of a fine of Rs. 1 crore and imposing on the appellants a penalty of Rs. 30 lakhs under Section 112 of the Act.

2. The appellants were an Electronics Hardware Technology Park (EHTP) unit under the 100% Export-Oriented Scheme, engaged in the manufacture and export of Aluminium Cans (housings) for Aluminium Electrolytic capacitors and Lead Tabs for Electrolytic Capacitors, both falling under sub-heading 8532.00 of the Central Excise Tariff Schedule. They were entitled to import specified goods without payment of duty under Notification No. 96/93-Cus dated 2.3.93 (as amended) for the manufacture and development of electronic hardware and

software in an integrated manner subject to fulfilment of the conditions stipulated in the notification. One of the conditions 'of the notification was that the importer would export 100% of their production (goods manufactured wholly or partly from the imported raw material) or such other percentage of production as may be fixed by the competent authority, for the period stipulated by the competent authority or such extended period as may be specified by the authority. The appellants imported capital goods and parts thereof, tools etc. valued at over Rs. 2.45 crores during 1994-95 and 1995-96 and also raw materials worth over Rs. 18 lakhs during 1994-95, 1995-96, 1996-97 and 1997-98 without payment of duty under the above notification. As per condition No. 2(vi) of the Industrial Licence issued by the Department of Industrial Development, Ministry of Industries, Govt. of India, dated 11.5.93, the appellants were required to export goods worth Rs. 807.22 lakhs (USD Rs. 25.63 lakhs) in five years. However, they could export only goods worth Rs. 17,03,146. In the meanwhile, the letter of permission (LOP)/letter of intent (LOI) granted to the party by NEPZ, Noida was cancelled on 22.6.2000 on the ground that acceptance of the stipulated conditions had not been submitted by them within the prescribed period of 45 days.

NEPZ letter dated 7.9.2000 (which intimated cancellation of LOP/LOI) stated that, for want of compliance with the condition, the approval had automatically lapsed on expiration of three years from the date of its issue (10.6.1992). The effect of the NEPZ action was that the approval granted to the party by NEPZ, Noida for import of goods duty-free stood cancelled w.e.f. 22.6.2000. The licence issued under Section 58 of the Customs Act also expired on 22.11.2000. As the appellants had failed to discharge the 100% export obligation, the Department, by show-cause notice, proposed to recover Customs duty on the capital goods and raw materials which were imported by them without payment of duty claiming the benefit of Notification No. 96/93-Cus. The notice also proposed confiscation of the goods and imposition of penalty. No reply to the show cause notice was filed by the party.

Though personal hearing was fixed and notified to them from time to time by the adjudicating authority, the party did not appear, nor did they seek adjournment. The adjudicating authority passed the impugned order on the basis of available records.

3. Heard both the sides. The Counsel for the appellants reiterated the main ground raised in this appeal that the impugned order was passed in violation of the principles of natural justice. He urged us to set aside the order and remand the case to the Commissioner. He relied on the Tribunal's decision in *Flistex Magnetics v. CC*, New Delhi, 2001 (135) ELT 857.

4. The SDR opposed the Counsel's submission by pointing out that adequate and reasonable opportunity of being heard was given to the party by the adjudicating authority. No reply to the show-cause notice was given. He also referred to the CBEC 's circular dated 6.8.97 (F.No. 307/5/97-FTT) wherein all Commissionerates of Customs were advised to demand and recover from 100% EOUs (who had availed the benefit of Notification No. 13/81-Cus and cleared imported goods free of duty), Customs duty on the goods in respect of which export obligation was not discharged even after 5 years of inception of the EOU. The Circular stated that it was not necessary to wait for any reference in this regard from the Development Commissioner.

5. We have examined the submissions. The main ground of challenge against the order of the Commissioner is the alleged violation of natural justice. The appellants have no case that they did not receive the show-cause notice. They did not reply to it, nor did they respond to the notices of hearing issued by the Commissioner. No valid reason has been stated in the present appeal as to why the appellants did not turn up before the Commissioner for being heard. The plea of violation of natural justice is bereft of bona fides/merit and the same is rejected.

6. It is not in dispute that the appellants failed to comply with condition No. 2(vi) of the licence issued to them on 11.5.93 for establishment of the EHTP. The condition was that they must export the entire production in five years. According to this condition, they had to export goods worth Rs. 807.22 lakhs but they could export only goods worth a little over Rs. 17 lakhs. It is also not in dispute that the appellants ceased to be a 100% EOU w.e.f. 22.6.2000, beyond which date, they were not entitled to the benefit of Notification No. 96/93-Cus dated 2.3.93 (as amended). There is no challenge with regard to the quantum of duty demanded in the impugned order, nor to the rate of interest. In the circumstances, we uphold

the demand. However, the redemption fine of Rs. 1 crore and the penalty of Rs. 30 lakhs appear to be excessive in the facts and circumstances of the case and we reduce the same to Rs. 30 lakhs and Rs. 10 lakhs respectively. The appeal stands disposed of in the above terms.

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