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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-08-2003

Reported in : (2004)(163)ELT398TriDel

Judge : P Bajaj

Appellant : Touch Stone Mining

Respondent : Commissioner of Customs

Judgement :

1. In this appeal which has been filed by the appellants against the impugned order-in-original, the issue relates to the liability of the appellants to pay penalty and interest as confirmed against them under Section 112 of the Customs Act.

2. The facts are not much in dispute. The appellants imported various inputs on the strength of quantity Based Advance Licence dated 20th May, 1995. They availed exemption from payment of duty under the exemption Notification No. 82/95, dated 26-5-1995. They admittedly failed to discharge the export obligation and accordingly on demand, they paid the entire duty amount in terms of clause (b) of the notification.

3. The adjudicating authority has imposed penalty of Rs. 1 lakh under Section 112(a) for violation of the provisions of Section 111(o) of the Customs Act and also directed the appellants to pay interest. He has, however, not referred to any provision of the Act or Notification under which he has so ordered.

4. The main contention raised by the learned Counsel is that, the goods were not liable to be confiscated in a case of breach of the export obligation. Only duty, leviable on the goods, as 'provided in the exemption notification, itself could be demanded from the appellants and which they had already paid. There fore, neither any penalty under Section 112(a) of the Act could be imposed nor the interest could be demanded from the appellants. On the other hand, the learned JDR has, however, contended that the provisions of Section 111(o) stood violated when the appellants committed breach of the terms of the exemption notification and as such the penalty under Section 112(a) had been rightly im posed.

4. But, in my view, the issue as to whether under the given circumstances the penalty could be imposed under Section 112(a), already stands decided in favour of the appellants in the case of Maruti Udyog Ltd. v. CC, Kandla, 2001 (132) E.L.T. 340 (T), wherein under similar/identical circumstances, it had been held that the provisions of Section 111(o) were not attracted where after availing the exemption from duty under exemption notification, the importer only failed to fulfil the export obligation, especially when he had discharged the duty liability. In the instant case, the exemption Notification No. 82/95 under which duty exemption was allowed to the appellants while importing the inputs on the strength of Quantity Based Advance Licence, did not provide for the confiscation of the goods and imposition of penalties on the importer in the event of his failure to discharge the export obligation. Clause (b) of this notification rather only stipulates that in such an event, the importer will be liable to pay the sum equal to the duty leviable on the goods, if no exemption was allowed. The appellants had already paid the entire duty amount on demand. Therefore, the ratio of the law laid down in the above referred case very aptly applies to the cases of the appellants. That being so, the impugned order regarding imposition of penalty and interest on the appellants is not sustainable and is set aside to that extent.

5. Consequently the appeal of the appellants stands accordingly allowed with consequential relief, if any, permissible under the law.