

Modern Suitings Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-03-2003

Reported in : (2004)(93)ECC229

Judge : S Kang, a T V.K.

Appellant : Modern Suitings

Respondent : Cc

Judgement :

1. The appellants filed this appeal against the adjudication order passed by the Commissioner of Customs.
2. The brief facts of the case are that the appellants are engaged in the business of manufacture and sale of textile items including yarn and fabric of various kinds. The appellants were granted 2 import licences under the EPCG scheme by the Director General of Foreign Trade. In pursuance to these licences, the appellants made of 27 weaving machines. The appellants filed an in-bond Bill of Entry and the imported goods were warehoused. The appellants also made request for extension of warehousing period and the customs department extended the period of warehousing. In the mean time, the appellants made an application to the Ministry of Industry on 26.5.98 for setting up a 100% EOU at its existing plant. The Ministry of Industry granted approval to set up 100% EOU vide letter dated 7.8.98. As the appellants got permission to start a 100% EOU, they made a request to the DGFT for cancellation of the licences under EPCG Scheme as unutilised. The

request was accepted by the competent authority. In the mean time, the appellants also approached DGFT to approve the goods imported in EPCG scheme for their use in the 100% EOU. The appellants also made a request vide letter dated 3.10.98 to the Assistant Commissioner to grant permission to have private bonded store room under Section 58 of the Act and also for permission to manufacture in bond under Section 65 in view of permission granted by the Ministry of Industry to set up a 100% EOU.³ A show cause notice dated 12.3.99 to the appellants for demand of customs duty and for confiscation of the goods under Section 111(0) of the Customs Act as they have contravened the provisions of Notification No. 110/95 dated 5.6.95. The appellants replied to the show cause notice. On 25.5.2000 a corrigendum to the show cause notice was issued by the Commissioner of Customs whereby the provisions of section 111(j) of the Customs Act were also invoked.

4. The adjudicating authority ordered the confiscation of the goods and directed the appellants to redeem the goods on payment of redemption fine of Rs. 50 lakhs and on payment of appropriate duty.

6. The contention of the appellants is that the goods were imported under EPCG licence and therefore got permission to set up a 100% EOU. On this permission, the appellants got cancelled EPCG licence. The appellants approached the Central Board of Excise & Customs and the Board issued a circular dated 10.11.99 and clarified that in a case where EPCG Licence is cancelled by DGFT as unutilised and the goods are still lying with the Customs, ex-bonding of goods from the warehouse may be allowed in the same manner as normal goods subject to fulfillment of conditions envisaged in the particular scheme under which the goods are intended to be cleared. The contention of the appellants is that the Board has further clarified that in such cases, no contravention of the conditions of the EPCG Scheme is construed to have occurred. The contention of the appellants is that this circular is not followed by the adjudicating authority only on the ground that the permission to extend the warehousing period was expired, therefore the goods are to be treated as improperly removed from the warehouse.

7. The contention of the appellants is that the lower authorities are bound by the Board's Circular. The appellants relied upon the decision of the Hon'ble Supreme Court in the case Paper Products v. CC, 2002-Taxindiaonline-84-SC-CX and in the case of CCE, Vadodara v. Dhiren Chemical Industries, 8. The contention of the Revenue is that the appellants approached for extension of period of warehousing and such period was expired on 23.10.97 and 20.10.97 and after expiry of such extended period the goods were to be treated as improperly removed from the warehouse. The Revenue relied upon the decision of the Hon'ble Supreme Court in the case of M/s. Kesoram Rayon v. CC, Calcutta, 1996 (86) ELT 464 (SC) to submit that the goods which are not removed from the warehouse within the permissible period are treated as goods improperly removed from the warehouse. In the circumstances, the contention of the Revenue is that the Board's Circular dated 10.11.99 are not applicable to the facts of the present case.

9. We find in this case that the goods were in question were imported under the EPCG Scheme. On getting permission to set up a 100% EOU, the appellants cancelled the EPCG licence as unutilised. These facts were not disputed by the Revenue. The Board's Circular No. 75/99 dated 10.11.99 was issued to cover up the situation where the goods were imported under EPCG Scheme and latter on the importer got approval to set up 100% EOU. For the purpose of ready reference the Board's Circular is reproduced as under :- "Sub : Capital Goods Imported under EPCG Scheme and kept in the Customs Bond and the EPCG Licence cancelled before clearance of goods Clarification - Reg.

It has come to the notice of the Board that in a particular case an importer had imported two consignments of weaving looms under the EPCG Scheme. The goods were kept in a Customs bonded warehouse.

Meanwhile, the importer approached the Government to work the EOU Scheme. They got the necessary approval from the Ministry of Industry and thereafter they approached DGFT for cancellation of EPCG Licences. The EPCG Licence were cancelled as unutilised. In this connection, a doubt has been raised as to whether the importer should be allowed to switch over to another scheme without contravening the provisions of notification No. 110/95-Cus, dated 5.6.95, under

which an obligation has been cast on the importer under the EPCG Scheme.

The matter has been examined. It is observed that mere issuance of EPCG Licence does not mean that the provisions of the Scheme have become operational. In this case, the goods were not cleared under the EPCG Scheme and therefore, it cannot be held that the importer is liable to penal action for non-fulfilment of obligations under the said scheme. It is felt that as long as the goods are under Customs bond, it would be inappropriate to take a view that the importer has violated the conditions of the notification.

Accordingly, it has been decided that, in a case where EPCG Licence is cancelled by DGFT as unutilised and the goods are still lying with the Customs, ex-bonding of goods from the warehouse may be allowed in the same manner as normal goods subject to fulfillment of conditions envisaged in the particular scheme under which the goods are intended to be cleared. In such cases, no contravention of the conditions of the EPCG Scheme is construed to have occurred. *Paper Products v. CC and CCE, Vadodara v. Dhiren Chemical Industries* held that the lower authorities are bound by the Circulars issued by the Boards.

11. The contention of the Revenue is that this Board's Circular is not applicable as period for keeping the goods in bond were expired. The Revenue relied upon the decision of Hon'ble Supreme Court in the case of *Kesoram Rayon (Supra)*. The issue before the Hon'ble Supreme Court in respect of the rate of duty in respect of warehoused goods. The Apex Court held that the rate of duty on the date when period of warehousing is over, will be applicable.

12. We find that in the present case as per the Revenue the period was expired in 1997 but the Revenue has not taken any action in respect of these goods. It was only on the request made by the appellants vide letter dated 3.11.98 for seeking permission to have private bonded store room and to manufacture goods in bond under Section 65 of the Customs Act, in view of the permission granted by the Ministry of Industry to set up a 100% EOU, the Customs Authority issued the present show cause notice. We find the Circular issued by the Board dated 10.11.99 required meaningful interpretation and when the Board clarified that in a case where EPCG Licence is cancelled by DGFT as unutilised and the appellants

received permission to set up a 100% EOU than the goods in question which are lying with the Customs are to be treated released subject to fulfillment of condition provided under 100% EOU scheme. The authorities below cannot circumvent the Board's Circular by saying that warehousing period in respect of the goods have already expired. In these circumstances, we find that it is fit case for reconsideration in the light of the Board's Circular. Therefore, the impugned order is set aside and the matter is remanded to the adjudicating authority for deciding afresh after affording an opportunity of hearing to the appellants. The appeal is allowed by way of remand.

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