

Hico Enterprises Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-12-2003

Reported in : (2004)(165)ELT469Tri(Mum.)bai

Judge : S T S.S., K Kumar

Appellant : Hico Enterprises

Respondent : Commissioner of Customs

Judgement :

1. Shri.V.S. Nankani and Shri. Naresh Thakker, learned Advocates appeared on behalf of the appellants. The issue involved in the present case is as to whether the transferee of the Value Based Advance Licence would be eligible for the duty free import, irrespective of the fact whether the original licence holder has fulfilled the export obligation and availed the credit. In other words, whether non compliance of condition (v) of the Notification 203/92-CUS dated 19.05.1992 would not stand in the way of the transferee to avail the benefit of duty free import under the licence as per condition (vii) of the said Notification. For the purpose of reference conditions (v) and (vii) are reproduced as under:- (v) that the export obligation is discharged, within the period specified in the said certificate or within such extended period as may be granted by the Licensing Authority, by exporting goods manufactured in India in respect of which - (a) no input stage credit is obtained under Rule 56A or, 57A of the Central Excise Rules, 1944 (hereinafter referred to as the said rules); (b) facility, under Rule 191A or Rule 191B as in force immediately before the 1st October, 1994, or under Rule 12(1)(b) or Rule 13(1)(b)

of the said rules, has not been availed; and (c) drawback has not been claimed either under Section 74 of the Customs Act, 1962 or Customs and Central Excise Duties Drawback Rules, 1971; (vii) where benefit of the notification is sought by a person other than licensee, such benefit shall be allowed against the said licence and the said certificate only if it bears endorsement of transferability by the Licensing Authority: Provided that benefit of this notification shall not be allowed to a transferee of licence for import of Acetic Anhydride except where the licence is endorsed for transferability before 24 November, 1993, and is transferred to an actual user who undertakes to use the Acetic Anhydride in his own factory; 2. The learned counsels relying on the decision in the case of Goodluck Industries reported in 1999 (108) ELT 818 (Tribunal) as affirmed by the Supreme Court in 2000 (120) E.L.T. A-66, contended that the transferee cannot be denied the duty free import under the licence. The learned counsel also relied on the decision of this Tribunal as reported in 2001 (138) E.L.T.786 (Tribunal) and 2001 (138) E.L.T 787 (Tribunal).

3. Shri. A.K. Saxena, Ld. JDR appeared on behalf of the Revenue and reiterated the impugned order and submitted that the Commissioner has considered the decision relied on by the learned counsel and has reached to the conclusion that a transferee cannot have a better title than the original licence holder. Since the fulfillment of the conditions given in the Notification is a condition precedent for availing the benefit, in the absence of compliance of the conditions of the Notification, it is not permissible for the transferee to get duty free imports. Commissioner of Customs, Mumbai v. M/s. Special Steels Ltd. and another, vide Order No.CII/2854-55/WZB/2003 dated 5.11.2003, while considering the availability of exemption under Notification No. 204/92 being on the similar footing has inter alia observed that once the conditions laid down under an exemption notification issued in public interest is not fulfilled, the imported goods can not be allowed duty exemption.

Moreover, if the licence holder himself was not eligible for duty exemption under a licence, the transferee cannot avail of the duty exemption under such licence. The said decision of the Tribunal has referred to other decisions of the Tribunal which have gone even to the extent of saying that even if the credit is reversed

subsequently, still the exemption with regard to duty free import cannot be allowed.

5. Thus from the above it is clear that the legal position is fluid and the issue involved is highly contentious which cannot be decided at the stay stage. It requires to be gone into in great detail with reference to the case laws, appreciation of evidence etc. As such, we are of the opinion that we may dispense with the pre-deposit of duty and penalty and fix the appeal for regular hearing on 31.01.2004. Notice may be issued.

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