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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-11-2004

Reported in : (2004)(95)ECC686

Judge : A T V.K., P Chacko

Appellant : Pol Securities Ltd. and ors.

Respondent : Cc

Judgement :

1. In these two appeals, arising out of a common Order-in-Appeal, the issue involved related to confiscation of imported goods/indigenous procured goods without payment of duty and imposition of penalties on both the appellants.

2. Shri J.M. Sharma, learned Consultant, submitted that POL Securities Ltd., a 100% EOU, had imported 40 computers and procured 4 UPSs indigenously without payment of duty; that on verification by the Departmental officers, it was found that 7 computers were transferred by them to their sister concern, Granada Services Ltd., and 32 computers were outside the bonded godown but within the appellants' STP Unit; similarly, one UPS was installed outside the bonded premises and 3 UPSs had been transferred to Granada Services Ltd.; that the Joint Commissioner, under the Order-in-Original No. 10/02 dated 31.5.2002, confiscated 3 computers and 4 UPSs and imposed penalties on both the appellants, besides imposing penalty on their Directors and also confirmed duty on the said computers and UPSs; that on appeal, the Commissioner (appeals) upheld

the confiscation of only 7 computers and 3 UPSs which were, seized from the premises of Granada Services Ltd. and imposed a fine of Rs. 2 lakh in lieu of confiscation, has confirmed the demand of duty in respect of 7 computers and 3 UPSs and reduced the penalty to Rs. 30,000 on each of the appellant, but set aside the penalties imposed on their Directors. The learned Consultant, further, submitted that, as per para 13 of Notification No. 140/91-Cus dated 22.10.91, they were entitled to transfer the goods imported by them to another 100% EOU; that the Director, STP had permitted transfer of 40 computers and 4 UPSs from appellant No. 1 to appellant No. 2; that out of the said permission, 3 UPSs had been transferred to appellant No. 2; that they had also informed the Deputy Commissioner, under their letter dated 7.5.2001 to the effect that they had requested STP to permit them to sell the equipments to another STP Unit as per the provisions of Export-Import Policy and the STPI, Noida, had given their consent to sell the capital goods and they had requested the Deputy Commissioner to debond the said goods; that the Board, under their Circular No.88/98-Cus dated 2.12.98, had clarified that Notification No. 44/98-Cus (NT) dated 27.7.98, has been issued to provide operational flexibility, ease the restrictions and remove practical difficulties being faced by 100% EOU; that it was mentioned in the said circular that physical supervision of Customs Officers, locking of warehouse premises, etc.

has been deleted and the EOU could itself undertake all movements from the EOU including clearance to other EOUs subject to recording of each transaction in the records including private records; that the said circular is binding on the officers and the provisions of the said circular are clearly applicable to indigenous goods procured under Notification No. 1/95-CE; that this removal of computers and UPSs from appellant No. 1 to appellant No. 2 was in accordance with the substantive condition of the legal provisions contained in the circular and, therefore, neither the goods are liable for confiscation nor duty is demandable nor penalty is permissible on them.

3. Countering the arguments, Shri Kumar Santosh, learned SDR, submitted that the benefit of Notification No. 140/91-Cus is available subject to condition that the 100% EOUs carry their activity under a legal bond and subject to such other

conditions, as may be specified by the Assistant/Deputy Commissioner; that similar condition exists in Notification No. 1/95-CE dated 4.1.95; that the Notification also makes it mandatory on the part of 100% EOU not to remove the goods from their unit without the approval of the Assistant/Deputy Commissioner; that no approval of the Assistant/Deputy Commissioner has been sought by the appellant No. 1 before removing the goods to the premises of appellant No. 2; that paragraph 13 of the Notification No. 140/91-Cus, clearly provides that the Assistant Commissioner or the Deputy Commissioner may allow the transfer of goods imported by a unit to another 100% EOU as per the procedure specified by him and necessary permission is granted by the Chief Executive of Software Technology Parks. The learned SDR contended that the provision of Notification is very specific; that the permission for the transfer of the goods has to be given by the Assistant/Deputy Commissioner, if necessary permission has been granted earlier by the Chief Executive of the Software Technology Park; that no such permission has been obtained either by appellant No. 1 to supply the goods or by the appellant No. 2 to receive the goods; that letter dated 7.5.2001 addressed to the Deputy Commissioner, is only for debonding of the goods and not for the permission to transfer the same from one 100% EOU to another 100% EOU. He, finally, submitted that the Board's Circular dated 2.12.98 is not applicable in respect of Notification No. 140/91-Cus as it was issued with reference to Notification No. 44/98 only. He, therefore, contended that, as both the appellants have contravened the provisions of Notification, they are liable to pay the duty on the goods involved and penalty is imposable besides confiscation of the goods.

4. We have considered the submissions of both the sides. The facts, which are not disputed, are that the goods were imported or procured indigenously without payment of duty by POL Securities Ltd. under Notification No. 140/91-Cus and 1/95-CE for the purpose specified in the notification. The computers and UPSs have been transferred by the appellant No. 1 to the premises of appellant No. 2 without the specific permission of the Assistant . Commissioner, Merely taking the permission of Chief Executive of the Software Technology Park, does not satisfy the condition specified in this regard in para 13 of the Notification No. 140/91-Cus. Thus, the appellant No. 1 has contravened the provisions of exemption notification as the impugned goods had not been used by them in their own premises for the

specific purpose. We, therefore, find no infirmity in demanding the duty on the goods transferred by appellant No. 1 to the premises of appellant No. 2. We, accordingly, uphold the demand of duty. We also hold that as the goods have been transferred in violation of conditions of the Notification, the same are liable for confiscation and penalties are imposable on both the appellants. However, taking into consideration the facts and circumstances of the case and the fact that the appellant No. 2 is also STPI unit (EOU), we reduce the redemption fine to Rs. 60,000 and also reduce the penalty to Rs. 10,000 on each appellant. With this modification, the appeals are rejected.

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