

Super Tex Labels Vs. Commissioner of Customs

Super Tex Labels Vs. Commissioner of Customs

SooperKanoon Citation : sooperkanoon.com/36935

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Oct-27-2004

Reported in : (2004)(97)ECC417

Judge : S Peeran, J T T.K.

Appellant : Super Tex Labels

Respondent : Commissioner of Customs

Judgement :

1. The appellants M/s Supertex Labels Pvt. Ltd., Bangalore imported capital goods under EPCG scheme on concessional rate of duty vide BE No. 00972 dated 14.7.95 and 033681 dated 19.7.95. Relevant notification under which the concessional rate of duty was claimed is 110/95 dated 5.6.95. As per conditions of the above notification, the appellants should have fulfilled the export obligation equivalent to 5 times the CIF value within a period of 5 years. Since the appellants could not fulfil the export obligation in terms of the Notification, the department initiated proceedings against them for the recovery of differential duty of Rs. 37,41,081 being the difference between the actual duty but for the notification and the duty paid under concessional rate. The Adjudicating authority after giving a personal hearing to the appellants confirmed the demand with interest at the rate of 24% as per condition No. 5 of Notification 110/95 Cus dated 5.6.95. BG executed by the appellants for an amount of Rs. 37,41,081 was ordered to be enforced and adjusted towards duty payable. The total interest payable was arrived at was Rs. 50,55,072. After adjusting the amount already paid by the

importer, a balance amount of Rs. 15,73,770 was also demanded by the adjudicating authority. The appellant was not successful in their appeal before the Commissioner (Appeals). Hence they have come before this Tribunal strongly challenging the OIA.2. Shri Shrinivasa Murthy learned Consultant appeared for the appellants and Shri P.M. Saleem learned SDR appeared for the Revenue.

3. The learned Advocate for the appellants submitted that Original Authority and the appellate authority have not interpreted the Notification No. 110/95 dated 5.6.95 correctly. According to the appellants the department cannot demand the entire duty leviable on the imported goods, when they had partially fulfilled the export obligation. They have also contended that the demand of interest is illegal inasmuch as interest liability was introduced in the Customs Notification 110/95 only on 18.9.95 by amending Notification No. 146/95 and on the date of import, interest liability was not provided in the Notification. The learned SDR reiterated the contentions in the OIO and OIA.4. The issue involves the interpretation of Notification No. 110/95 dated 5.6.95. For easy comprehension, relevant portion of the Customs Notification is reproduced below: "In exercise of the powers conferred by Sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), The Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods as specified in the Table annexed hereto from so much of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as is in excess of the amount calculated at the rate of 15% ad valorem and whole of the additional duty leviable thereon under Section 3 of the said Customs Tariff Act, subject to the following conditions, namely:- (1) The goods imported are covered by a valid licence issued on or after 1st May 1995 under the Export Promotion Capital Goods (EPCG) Scheme in terms of Export and Import Policy hereinafter referred to as the said Policy permitting import on payment of duty of customs at the rate of 15% and the said licence is produced for debit by the proper officer of the customs at the time of clearance.

(2) The importer at the time of clearance produces to the Assistant Commissioner of Customs, a certificate from the Licensing Authority for having executed a legal undertaking in terms of the paragraph 45 of the said Policy.

(3) The importer executes a bond in such form and for such sum and with such surety or security as may be specified by the Assistant Commissioner of Customs binding himself to fulfil export obligation equivalent to four times the CIF value of the goods imported or for such higher sum as may be fixed by the Licensing Authority within a period of five years from the date of issue of the said licence in the following proportion:-----S.No.
 Period from the date of issue of licence export obligation----- Provided that export obligation of particular year may be set off by the excess exports made in the preceding years.

(4) The importer produces within thirty days of the expiry of each year from the date of issue of licence form 2nd year or within such extended period as the Assistant Commissioner of Customs may allow, a certificate from the Licensing Authority showing the extent of export obligation fulfilled, and where export obligation of any particular year is not fulfilled in terms of the preceding condition, the importer shall within three months from the expiry of the said year pay an amount equal to that portion of the duty leviable on the goods but for the exemption contained herein which bears the same proportion as the unfulfilled portion of the export obligation bears to the total export obligation.

(5) The importer shall, if he fails to discharge a minimum of 25% of the export obligation prescribed for any particular year, for three consecutive years, be liable to pay forthwith the whole of the duty of customs leviable on the goods imported but for the exemption contained in this notification.

(6) The capital goods imported, assembled or manufactured are installed in the importer's factory and a certificate from the jurisdictional Assistant Commissioner of Central Excise is produced within six months from the date of completion of imports or within such extended period as the said Assistant Commissioner of Customs may allow....."-----Block
 Percentage of as against Exports-----1 Year 0.37% Nil

II Year 1.84%	10%(Less than 25% of the envisaged Export	III Year 3.83%	
20%(More than 25% of the envisaged Export	IV Year 9.28%	30%(More than 25% of the envisaged Export	
V Year 2.77%	40%Less than 25% of the envisaged Export		
-----	-----	Total	18.09%
100%-----	-----		

6. On going through the notification, we find that the entire duty leviable on the imported goods but for the exemption could be demanded from the appellants in terms of Condition 5 of the Notification. In other words if it is shown that the appellants have not violated the Condition 5 of the Notification, then full duty on the imported goods but for the exemption cannot be demanded. The notification prescribes some proportion of total export obligation to be fulfilled in each year from the date of issue of license as per condition 4 of the Notification. As per condition 5 of the Notification, they have to discharge a minimum of 25% of the export obligation prescribed for any particular year, for three consecutive years so that the department does not demand full duty from him. In a more precise manner, condition 5 stipulates that when there is a failure to discharge a minimum of 25% of the export obligation prescribed for any particular year for three consecutive years, the importer shall be liable to pay forthwith the whole of the duty of customs leviable on the goods imported but for the exemption contained in the notification. A perusal of the annual performance of the appellant indicated above reveals that in the fourth year, the appellants fulfilled 9.28% of export obligation whereas the export obligation prescribed as per the Notification is 30%. 25% of the prescribed obligation is 7.5% and since the appellant has performed 9.28%, he has performed more than 25% of the prescribed export obligation. By virtue of this fact, the appellant is not hit by condition 5 of the notification. To put it in different wordings, the appellants have not failed to discharge a minimum of 25% of the prescribed export obligation for three consecutive years. Hence demanding full duty of customs from the appellant is not correct.

7. Condition 4 helps us in determining the duty liability of the appellant when he fulfills the export obligation partially. For example in the second year, the importer of capital goods should fulfil 10% of the export obligation. In this case, the appellant has fulfilled only 1.84 %. There is definitely a shortfall. As per condition 4 "Where export obligation of any particular year is not fulfilled in terms of the

preceding condition, the importer shall within three months from the export of the said order pay an amount equal to that portion to the duty leviable on the goods but for the exemption, contained therein which bears the same proportion as the unfulfilled portion of the total obligation bears to the total export obligation". In this case the appellants is liable to pay duty on the import goods in terms of condition 4. Similarly in the other three years also, as the appellant has not fulfilled the yearly quota of export prescribed to that extent, condition 4 is invocable and the appellant is liable to pay duty. A harmonious reading of the entire notification reveals that when an importer partially fulfills the export obligation, full duty of customs on the entire goods imported cannot be demanded. Duty can be demanded only for failure to satisfy the condition No. 5 of the Notification but in this case, the department has demanded the full duty leviable from the appellant and the department is not correct. To that extent the OIO and the OIA are not legal and goods. As regards the actual liability of the appellant to pay duty on imported goods, we have to consider yearly performance. If in each year, he fulfills the prescribed export obligation, no duty will be demanded from him other than what he paid at concessional rate. But when there is default, in any year then the liability will be calculated in terms of condition 4. As regards the interest liability, it is seen that when the goods were imported the notification 110/95 was not having any interest clause. The liability to any interest arose only by virtue of Notification No. 146/95 dated 19.9.95. Since the amendment of the notification cannot have any retrospective effect, the demand of interest is illegal. In view of the above observations, the OIA is set aside. We direct the original authority to recalculate the duty liability in terms of condition 4 of the notification and adjust the same in the amount recovered from the appellants. The balance amount is to be refunded.

The demand of interest is set aside with these observations, we allow the appeal.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com