

Seva Enterprises Vs. the Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-29-2004

Reported in : (2005)(179)ELT464Tri(Mum.)bai

Judge : A Wadhwa, M T K.D.

Appellant : Seva Enterprises

Respondent : The Commissioner of Customs

Judgement :

1. The instant appeal is directed against the order-in-original passed by the Commissioner of Customs (Adj), Mumbai. In the said order, the Commissioner had confiscated a consignment of 28,860 Kgs of Pseudoionone valued at Rs. 1,61,86,611/- under Section 111 (o) of the Customs Act, 1962, confirmed duty of Rs. 1,06,30,071/- under Section 28 *ibid*, and imposed penalty of equivalent amount under Section 114A *ibid*, besides demanded interest.

2. As the facts of the case enumerated in the order-in-original indicate, the consignment in question, was previously imported in January 1998 by M/s. Seva Enterprises (appellants herein) and warehoused at Nafed warehouse. They transferred the goods in bond to M/s. World Trade Impex, from where the goods were exported to Dubai instead of the original destination, namely: Russia as manifested on the respective shipping Bills. The current import was of the same material, which was abandoned at Dubai by the exporter and was auctioned at Dubai by the Dubai Customs and the same was imported by the appellants. It has

been held in the adjudicating order that, the current import was sought duty free under DEEC scheme against advance licence No. 03024663 dated 18/03/98 obtained by M/s. Seva Enterprises (Appellants). It was alleged that, the said importer was required to fulfill the export obligation within eighteen months of the issue of the licence. The importer was under the obligation to use the material for the manufacture of the export product (Betaionone 92%) and was required to complete its export on or before 17/02/2000. The consignment was re-imported on 22/02/99 declaring CIF value at Rs. 1,61,86,611/-. Since the importer had not fulfilled the stipulated export obligation, even though additional six months had passed from the last date of fulfillment of export obligation was over, the DRI seized the material on 05/09/2000 under panchanama under reasonable belief that the material is liable to confiscation and Customs duty is liable to be recovered. The Commissioner accordingly confirmed the duty and imposed penalties as already mentioned above.

3. Besides, the show cause notice issued to the appellants also mentioned fraudulent export of Pseudoionone 90% by showing the inflated value of Rs. 2.44 crores (approximately), as against the import value of Rs. 1.2 crores,(Approximately) thereby committing violations of Foreign Exchange Law. So far as this allegation relating to export violation is concerned, the Commissioner has held that, the appellants are not liable for penal action under Section 114 of the Customs Act.

There is no cross appeal from the revenue on this aspect. Hence the conclusion that the case does not involve any fraud in the export transaction has attained finality.

4. From the above, we note that the only allegation against the importer, which has survived in the adjudication, is that, the goods under importation had not been utilized for the manufacture of export product as required under the DEEC scheme. It is further mentioned that, importers have not even requested for extension of the period of export obligation. Accordingly, the confiscation of the goods has been ordered and also the duty has been demanded.

6. In this connection, it is noted that, the allegation of export over valuation, etc. mentioned in the show cause notice, have been dropped by the adjudicating authority. The only adverse finding that has been given against the importer is that, they have failed to utilize the material imported duty free in the manufacture of export goods. At the point of adjudication, the export obligation period was already over.

Consequently, the duty has been demanded on the said goods, on the ground of their non-utilisation in the manufacture of export product.

7. We note that the DRI had started their investigation in December 1999. The export obligation period was not yet over at that point of time. The appellants were subjected to arrests and other harsh treatment. It has come on record that DRI themselves have written a letter dated 27.4.2000 to the Nafed warehouse giving reference to their earlier letter dated 03/12/99 not to part or effect delivery of the consignment to any person. It therefore follows that, it is only on account of the intervention of the DRI on 3.12.99 that the material could not be taken over by the importers for further manufacture and export. The enquiry related to alleged fraud in the re-export and had no connection with non-utilisation of the duty free material in completing the export obligation. Therefore to allege the failure of the importers in making export within the export obligation period is nothing but rubbing salt on the wound. The adjudicating Commissioner is not subjecting the imported goods to confiscation on noticing any other irregularities in the imports. The confiscation has been resorted to only on the ground of failure to complete the export obligation. The failure in completing export obligation could not have been visualized by the DRI on the date of DRI action in December 1999 when the export obligation period was still valid. The detention of the consignment and its subsequent seizure was totally uncalled for and totally illegal.

8. Considering the overall background and circumstances of the case, we feel that the order for confiscation and demand of duty and imposition of penalty and demand for interest is totally unjustified. Since the export obligation period has already expired as the things stands today, the confiscation of the material can be said to be said to be technically correct, though the same is required to be set

aside in the light of our observations in the succeeding paragraphs. Keeping in view the background and the circumstances of the entire case we feel that, the appellants deserve to be given a chance for approaching the licensing authority to seek extension of the period of export obligation and permitted to complete the export obligation within such extended period.

9. We accordingly, direct the lower authorities to release the material forthwith to the importers. The importers are granted liberty to approach the licensing authority to seek extension of the period of export obligation. In the event, the appellants fail to obtain such extension, within six months from the date of receipt of this order only then, the department can proceed to recover the duty due from the appellants, in terms of the relevant customs notification. Keeping in view the circumstances of this case, we hold that there was no warrant in imposition of penalty and demand for interest.

10. In the light of discussions above, we allow the appeal and set aside the impugned order in terms of our aforementioned directions.

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