

Commissioner of Customs and Vs. Grand Foundry Ltd. and ors.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-02-2004

Reported in : (2005)(186)ELT594Tri(Mum.)bai

Judge : J Balasundaram, Vice, A M Moheb

Appellant : Commissioner of Customs and

Respondent : Grand Foundry Ltd. and ors.

Judgement :

1. These appeals by the Revenue are directed against the order of Commissioner of Customs, Mumbai.

2. Briefly the issue relates to import of duty free material under Notification No. 203/92 Cus. And 204/92. One of the respondents (M/s.

GFL) imported several raw materials over a period of time availing of exemption under Notification No. 203/92 (VABAL) and No. 204/92 (QABAL).

The obligation cast on the importers is that they should manufacture the final product, Bright Stainless Steel Bars, out of the duty free materials and export them within a given time as stipulated by DGFT authorities. The dispute pertains to import made under 9 VABAL licences and 2 QABAL licences. Some of the imports are made by M/s. GFL and others by their supporting manufactures.

3. The allegations in the show cause notice leading to the impugned order are as follows: "(a) M/s. GFL, availed of modvat credit on the inputs used in the manufacture of products exported under VABAL. This constitutes violation of condition (v) of notification No. 203/92 Cus. and consequently M/s. GFL, are not eligible for the benefit of duty free Imports under the said licences.

(b) M/s. GFL mis-declared the export goods namely stainless steel bright bars as stainless steel bars and rods so as to be covered under Sl. No.717 of the Standard Input Output Norms (SION).

(c) M/s. GFL, sold the exempt material ; imported under the 9 VABAL licences to their supporting manufacturers under the guise of Letter of authority (L/A) procedure.

(d) M/s. GFL, sold the exempt material imported under two QABALs to their supporting manufacturer M/s. Dhiraj Iron & Steel Pvt. Ltd. (DISPL).

4. The Commissioner's findings on each of the above allegations in short are: (a) The importer reversed the MODVAT credit taken on the inputs that have gone into the manufacture of final products as per the amnesty scheme contained in circular of 3.1.97 and 10.1.97 along with interest and therefore the demand for customs duty for non fulfillment of conditions contained in Notification No. 203/92 does not stand. The total amount reversed was Rs. 41,60,176/- In order to ascertain whether such reversal constituted full and complete reversal of credit taken, the Commissioner made several attempts through the Central Excise Officers having jurisdiction over the importers' and his supporting manufacturers' premises but the officers did not respond. It is under these circumstances he came to the conclusion that the imponers have acted in terms of amnesty scheme and fully complied with the conditions therein and therefore demand for customs duty on the raw material imported under VABAL licences does not stand.

(b) In so far as imports made under 2QBAL licences the allegation is that M/s. GFL sold the imported material to their supporting manufacturer M/s. Diraj Iron and Steel Pvt. Ltd. The Commissioner's finding in this regard is that Notification No. 204/92 does not prohibit availment of MODVAT Credit on inputs used in the

manufacture of export product. The only condition is that such imported materials shall not be sold before the export obligation is fulfilled. The Commissioner found that M/s. GFL exported the final product first and then imported the material M/s. GFL used the indigenous material to manufacture the goods for export and then imported the inputs, which they sold to their supporting manufacturers who in turn used the said inputs for manufacture of bars and then sold such bars in the market. He considers this process as a technical infraction. Further the Commissioner held that M/s. GFL. reversed the MODVAT credit even in respect of these goods. In the light of these facts he held that the transfer of material to the supporting manufacturer and its subsequent sale in the market is not a contravention of the statutory provisions.

5. The Commissioner concluded that M/s. GFC completed the export obligation in respect of 5 VABAL licences and got the LUT cancelled and in respect of 4 others they were awaiting the cancellation of LUTs after submitting all the papers to the DGFT authorities. Thus reversal of modvat Credit and fulfillment of export obligation on the part M/s.

GFL. fully meets the condition of the licences under which the importers availed of the benefit of Notification No. 203/92.

6. The Revenue's grievance is that the Commissioner ought to have considered the statements of one Shri Kiran D. Jangla Managing Director of M/s. Grand Foundry Ltd. before concluding that the breach of conditions of Notification No. 203/92 are only technical. It is further argued that the statements of the representative of M/s. Shree Ishar Alloy Steels Ltd., M/s. Panchmahal Steel Ltd. and M/s. Ferro Alloy Steel Corporation Ltd. and records recovered from their respective places indicated that the materials imported by them by utilizing the licences of M/s. GFL under letter of authority were used by each of them in the manufacture of their own products. The goods thus manufactured, were sold by them for home consumption. Accordingly the imported materials were not used in the manufacture of export products.

Since the so called supporting manufacturers have not used the imported material in the manufacture of export products, customs duty is liable to be paid on the duty

free material. Further the impugned goods are liable to confiscation. The Commissioner ought to have ordered accordingly.

8. It is hard to find out from the Revenue's appeals as to where the facts end and the grounds begin . The Commissioner extensively dealt with the issues involved. His conclusion is two fold. First he held that the condition of that input stage credit should not be availed when goods are imported under Notification No. 203/92 is fully satisfied inasmuch as the exporter reversed the credit so taken after the amnesty scheme was announced. He held that export obligation was completed in respect of VABAL licences. Secondly in regard to imports made under 2 QBAL licences he discussed as to how the goods were exported under letters of authority by the supporting manufacturers. He held that the inputs were imported after the finished goods were exported. He further held that the sale of material before LUT is cancelled is at best a technical lapse. The Commissioner spoke of substantive compliance with the requirements of Notification No. 203/92 and 204/92 under which inputs were imported. We observe that it is not the case of the Revenue that the imported material was sold as such.

The case is that the imported material was used in the manufacture of final products and in turn they were sold in the domestic market But even this was done only after the export obligation was complied, accordingly to the Commissioner. Thus both in the case of imports under 203/92 and 204/92 . The Respondents have complied with the provisions of the said Notification. The Revenue has not made out a case that the respondents have not reversed the input stage credit in respect of imports under 203/92 nor it has made out a case that the provisions of Notification No. 204/92 are violated in any manner. We do not find any infirmity in the impugned order of the Commissioner. The appeals are rejected.

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