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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-23-2004

Judge : S T S.S., T Anjaneyulu

Appellant : Goal Packaging, P.P.L. Goal, Goal

Respondent : Commissioner of Central Excise

Judgement :

1. Heard both sides and considered the matter in these appeals which arise from the common order. The issue involved is a claim of DEPB by the firm Goel Air Shrink Ltd., who were alleged to have overvalued as shown on certain Shipping Bills seeking export of goods on DEPB benefit. The Custom authorities found and were of the view that the valuation declared on those Shipping Bills for the said export were over pitched and excessive. The export was therefore not permitted as claimed. On the contrary even though investigation had started, the goods were allowed to be removed back to town for alleged claim of reprocessing. The goods subsequent to the said reprocessing were allowed to be cleared and exported on substituted shipping bills without claim of DEPB. However, the department proceeded with the charge of the claims made on the earlier shipping bills and these proceedings resulted in the order now impugned to the effect.

"1 M/s. Goel Air Shrink (I) Ltd., (Manufacturer exporter) and M/s.

Goel Packaging Industries (Merchant exporter) have over invoiced the export products to claim undue benefit under DEPB. I accept the total value of Rs.

1,13,67,500 - (Rupees one crore thirteen lakh sixty seven thousand five hundred only) in respect of Fragrant designed PP Mats as determined by the assessing officer as against the total value of Rs. 5,12,03,216/- declared by the exporters.

2. I impose penalty of Rs. 25,00,000/- (Rupees twenty five lakhs only) on M/s. Goel Air Shrink (I) Ltd. Sinnar, Nashik Manufacturers Exporters and also penalty of Rs. 25,00,000/- (Rupees twenty five lakhs Only) on M/s. Goel Packaging Industries Ltd., under Section 114 of Customs Act 1962, for their act of filing the shipping bills fraudulently for getting undue benefits of DEPB by way of over invoicing of the product under export.

3. I also impose penalty of Rs. 5,00,000/- (Rupees Five Lakhs Only) on Shi Purshottamlal Mahavirprasad Goel, the Chairman and Director of M/s. Goel Air Shrink (I) Ltd. Sinnar, Nashik, a 'Karta' of the family who has been found involved in the conspiracy for getting undue benefits under claim of DEPB. He was involved in day to day activities of production, dispatches, administrate of the manufacturing unit at Sinnar.

4. I also impose a penalty of Rs. 5,00,000/- (Rupees Five Lakhs Only) each on S/Shri Pramod Purshottamlal Goel the Managing Director of M/s. Goel Air Shrink (I) Ltd. Sinnar, Nashik and partner of M/s.

Goel Packaging Industries Ltd., and Pradeep Purshottamlal Goel, Director of M/s. Goel Air Shrink (I) Ltd. Sinnar, Nashik and partner of M/s. Goel Packaging Industries Ltd., who have been found directly involved for filing shipping bills with over invoiced prices and preparing fake purchase documents, transport documents with the help of Shri. Vikas Ramkrishna Chaudhary as dealer/supplier through Shri Manoj Kumar Jain as a broker, who have jointly involved in the conspiracy for getting undue benefits under DEPB fraudulently.

5. I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakhs Only) only on Shri. Vikas R. Chaudhary of Kolkata under Section 114 of Customs Act, 1962 for his intentional act of opening of bank accounts in respect of non existing firms, issuing blank signed cheques to Shri.

Pradeep Goel and for helping M/s. Goel Air Shrink (I) Ltd., and others for over invoicing of products for undue benefit under DEPB. Further I impose a penalty of Rs. 50,000/- (Rupees Fifty Thousand Only) on Shri. Manoj Kumar Jain of Kolkata under Section 114 of Customs Act for his involvement of introducing Shri. Vikas Chaudhary with Shri. Pradeep Goel and Shri. Sanjay Agrawal, Chartered Accountant for opening of bank accounts in respect of non-existing firms with only intention of helping M/s. Goel Air-Shrink (I) Ltd. to defraud the Government. " 2. The issue of exports under DEPB scheme (SIC) liability to confiscate under Section 113 (1)(c) and penalty under Section 114 of the Customs Act 1962, is no longer res-inlegra having been settled in favour of assessee following the decisions of the apex court CC (EP), Mumbai v. Prayag Exporters Pvt. Ltd. Ashu Exports v. CC, Chennai Kobain ECS India Pvt. Ltd. v. CC, Mumbai G.P. Jaiswal v. CC, Lucknow [2004 (167) ELT 206 (Tri-Del.)] and no contrary decision being shown to us. In view of the same, we have to set aside the order impugned in this case and allow these appeals.

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