

**Padmini Polymers Ltd. Vs. Commissioner of Customs**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Jun-24-2005

**Reported in :** (2005)(190)ELT370TriDel

**Judge :** P Bajaj

**Appellant :** Padmini Polymers Ltd.

**Respondent :** Commissioner of Customs

**Judgement :**

1. The above captioned appeals have been directed by the appellants against the impugned orders-in-original vide which the Commissioner of Customs as adjudicating authority has imposed penalties on them as detailed therein, under Section 112 of the Customs Act.

2. I have heard both the sides. From the record, it is evident that appellants filed certain Bills of Entry for import of in all 22 CD ROMs declaring as Multimedia Application Software, on CD ROMs from California and Singapore, and claimed benefit under Section No. 173 of Notification No. 11/97 dated 1-4-97, which exempted completely computer software from payment of duty. On examination, it revealed that the goods had been over-invoiced, with intent to drain out for more foreign exchange, from the country, and on that account, penalties had been imposed on the appellant-company, M/s. Padmini Polymers (in short, PPL) as well as on its Chairman and the Directors as detailed in the impugned order. But in my view, the impugned order of the Id.Commissioner, cannot be sustained. It is quite

clear from the record that immediately, after the examination of the goods, the appellants, informed the suppliers that the goods sent by them were not of standard specifications who admitted their fault/lapse in that regard and undertook to replace the goods, vide their letters dated 9-1-98 and 17-1-98. Thereafter, the appellants issued necessary instructions to their bankers to stop payment against the L/C, against which the goods were imported. They also made request to the Commissioner for permission to re-export the goods, but it was declined. The appellants thereafter pursued the matter with the suppliers and got back the foreign exchange from them, which their bankers had remitted in spite of their instructions to stop payment. Therefore, apparently, there had been no drain out of the foreign exchange from India, by the appellants, to the foreign country. The observations of the Commissioner that there was collusion between the appellants and the suppliers also cannot be accepted for want of any allegations much less tangible evidence, to that effect in the show cause notice against them. The Id. Commissioner could not travel beyond the allegations in the show cause notice, for imposing penalties on the appellants under Section 112 of the Act. It could not be inferred from the letter dated 3-1-98 vide which the appellants informed the customs authority that the goods were immediately required by them for various developmental work and for utilization in various upcoming contracts for web-page designing and development, that they were interested in draining out the foreign exchange from India. At that time, there had been no final assessment on the Bills of Entry. They on finding the goods of lower standard, took up the matter with the foreign suppliers and stopped payment to them. When the suppliers, on their request showed inability to replace the goods, they abandoned the same and recovered back their money. All these facts go long way to falsify the observations of the Commissioner (Customs) regarding collusion between the suppliers and the appellants, in the over-invoicing of the goods, with intent to drain out illegally foreign exchange from India to foreign countries.

Therefore, provisions of Section 112 of the Act could not be invoked against the appellants for imposing the penalties.

3. In the light of the discussions made above, the impugned orders in all the appeals, are set aside in toto. The appeals of the appellants are allowed with

consequential relief as per law.

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