Chanderpur Works Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-05-2006

Reported in : (2006)(111)ECC283

Judge : M T K.C.

Appellant : Chanderpur Works

Respondent : Cc

Judgement :

1. On behalf of appellants it was stated that the appellants are manufacturer/exporter of complete cement plants, paper plants, sugar plants and fertilizers plant machineries, etc. On 13.3.2003, they entered into a contract with M/s. Dynasty Industries Nepal Private Limited for supply of cement plant of capacity of 200 tones per day to be set up at Krishna Nagar. The plant was sent in parts for assembling the machinery at the site to make it a complete plant. The mode of payment agreed with the buyer was through letter of credit in US$. The appellants manufactured the cement plant for export to Nepal and it was fabricated from M.S/H.R. Plates/sheets and other items. They started the export of their consignments through Land Customs Station, Sonauli from June 2003. The first two consignments were cleared under free shipping bills. For the consignments for the export in August, 2003, they claimed DEPB benefit. However, the certificate issued by the Chartered Accountant that the machinery was fabricated from M.S./H.R.was not accepted by the Department. The customs authorities got verified the machinery of the plant through Madan Mohan Malviya College of

Engineering, Gorakhpur, who certified that the goods in question were fabricated structures of M.S./H.R. Plates/Sheets/Coils/Strips.

Despite this, the Customs Officers did not accept their Bill of Export under DEPB Scheme and appellants were forced to clear the goods under free Bill of Export as their date of contract was expiring. Their subsequent consignment of the same plant were cleared under pressure from the Customs under free Bill of Export and they were told to place a stamp on the bills of export to the effect that they will not claim any incentive/benefit of customs or central excise duties under export promotion scheme. When the goods were being exported, they were making constant request with the Commissioner of Customs, U.P. Lucknow for allowing them DEPB benefit. They were informed by the Asstt.

Commissioner, Customs, Lucknow under letter dated 10.3.2005 that the goods exported are not exclusively covered under Entry No. 61/431 of DEPB schedule and the exporter has not declared the individual weight of constituent units of the composite product for claiming benefit under DEPB as per Sr. No. 11 of General Instructions for DEPB rates and the constituent units covered under DEPB should have been made of 95% of HR Plates/sheets. Therefore, in view of the goods already having been exported, it is not possible to verily the contents of H.R.Plates/Sheets and, therefore, conversion of free shipping bills into DEPB shipping bills does not merit consideration. On this letter of Asstt. Commissioner, they filed appeal before the Commissioner (Appeals), who also rejected their request upholding the order of Asstt. Commissioner.

2. It was pleaded for the appellants that their first two consignments were not sent under the claim of DEPB, but for their consignments from August, 2003, they had claimed DEPB benefit which was denied to them and they were forced to write on the shipping bills that clearance may be allowed under free shipping bills and same endorsement were recorded on the shipping bills. They pleaded that since they were claiming DEPB benefit, therefore, they produced the certificate from CA and the department has also called the engineers from Madan Mohan Malviya College of Engineering, Gorakhpur to get the consignments examined who certified that items were fabricated structures of MS/HR Plates/sheets/coils but

despite that they were forced to clear the goods under free bill of entry. It was stated that when the similar consignments were cleared from workshop for the same plant, for export to other countries they were allowed DEPB benefit. The appellants has referred to the circular No. 6/2003 dated 28.1.2003 where the Board has directed that where the exporter has filed shipping bill under a particular export promotion scheme, but benefit of that scheme was denied by DGFT/Customs, conversion of shipping bill may be allowed subject to the conditions that on the basis of available export documents, the fact of use of inputs is satisfactorily proved in the resultant export product for the purpose of allowing conversion into Advance Licence/DFRC/ DEPB/draw back claim. The examination report and other endorsements made on shipping bill/export documents proves the facts of export of the export products and the export product is clearly covered under the relevant SIGN and DEPB Schedule, as the case may be and on the basis of shipping bills/export documents, the exporter is fulfilling all conditions of the said scheme and is eligible for its benefit. It was, therefore, pleaded that the customs authorities may be directed to convert their free shipping bill into DHPB shipping bill and DFPB benefit may be allowed to them, in respect of those consignments where they are able to establish that the particular consignments falls under a particular Sl. No. of DEPB Schedule. It was considered that in respect of composite items since items of individual part was not mentioned therefore, it is not possible for them now to produce am evidence. But in respect of other items, where the description is clearly covered by DEPB and where the fabrication has been done with M.S./H.R plates: sheets, coils and which have been examined by the CA in such cases, the benefit should not denied to them. The weight of the item in such cases is mentioned in the packing list and invoices and these are available with the customs authorities.

3. On behalf of the Revenue, it was argued that in all the shipping bills, there is a endorsement to the effect that under free shipping bill as per party's request dated 27.9.2003 and on the subsequent shipping bill there is a stamp that no incentive/benefit relating to customs or central excise under export promotion scheme would be claimed against items exported vide the shipping bills for export duly signed by the authorised signatory of the appellants, in view of this, it was argued that when the appellants themselves have cleared the goods under free

shipping bills or with an endorsement that they will not claimed benefit under export promotion scheme, the lower authority have correctly denied the conversion of free shipping bill into DEPB shipping bill.

4. I have considered the submissions made by both the sides. I find that the appellants in their commercial invoices and in the packing list have mentioned, the description of the goods and also the group code and serial number under which DEPB benefit is available and the rate of DEPB benefit, which shows that they wanted to claim the DEPB benefit. However, they have stated that they were forced by the customs authority at Sonauli to get the goods cleared under free shipping bills. This also appears to be correct as if the goods were to be cleared under free shipping bill men there was no reason for keeping the consignment before clearance at Sonauli for examination by CA and Engineers from Madan Mohan Malviya College of Engineering. Therefore, in view of the Board's circular No. 6/2003-Cus dated 28.1.2003 where the exporter wanted to avail the benefit promotion scheme hut he was forced to file free shipping bills, the appellants can set the shipping bills converted into DEPB shipping bill. They made request for the same to the Commissioner of Customs, Lucknow, but the same was rejected and they were communicated the rejection by the Asstt. Commissioner against which the appeal was tiled before the Commissioner (Appeals) Commissioner (Appeals) has given a finding that the appellants had obtained advice from the Directorate General of Foreign Trade, who has advised customs to allow DEPB on merit and after verification that the export product was made of 95% HR Plates/sheets as described in the said DEPB Entry No. 431 of "Engineering Group". The Commissioner (Appeals) has also accepted that the goods were examined by the engineers of Madan Mohan Malviya College of Engineering, Gorakhpur, who on examination found that, "the items Air Lift Kiln Shell, Railing Angle. Platform Channel of Gantry, Nodulizer Feed Hopper & Cyclone Separator has been inspected by us and is a fabricated structure of MS/HR plates/sheets/coils/sheets". I find that when the engineers have given a certificate that this is a fabricated structure of MS/HR Plates/Sheets/coils/sheets then the question of writing that it is of 95% steel does not arise. Thus, the finding of the Commissioner (Appeals) is not correct. Similarly, I find that item box girders for bridges were inspected by the engineers. There is a separate entry for item box gliders in the DEPB Schedule at

Sl. No. 431 Group Code 61.

Thus, the rejection by the Commissioner (Appeals) is not based proper ground.

5. I, therefore, set aside the order of the Commissioner (Appeals) and direct the customs authority to allow conversion of the free shipping bill into DEPB shipping bill and allow the DEPB benefit where the appellant is able to establish with reference to their documents that they are entitled for DEPB benefit. Only in case of composite articles DEPB benefit should not be allowed as no inspection and weighment was done at the time of export. Ordered accordingly.