B.G. Goswami Vs. Cc, Icd

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-24-2006

Judge : R Abichandani, M T K.C.

Appellant : B.G. Goswami

Respondent : Cc, Icd

Judgement :
1. This stay application has been filed by Shri B.G. Goswami, Prop. of M/s Neelam Exports and M/s Neelam Exports for staying recovery of penalty of Rs. 2 lacs each imposed on them.

2. Although the stay application is filed for staying the recovery of penalty of Rs. 2 lacs and the appeal is also filed for the same, however, in the prayer made in the appeal petition besides setting aside the penalties, it is also prayed that the recovery of duty drawback amounting to Rs. 20,60,348/- and redemption fine of Rs. 2 lacs on M/s Neelam Exports may set aside. Since the stay application has been filed only for staying the recovery of Rs. 2 lacs. The applicant will have to pre-deposit the entire amount of duty drawback for hearing the appeal.

3. For staying the recovery of penalty, it was argued for the applicants that M/s Neelam Exports have exported the goods under the four shipping bill and out of the four, they have already received the export proceeds amounting to US$ 1,71,700/- from the buyer M/s Hawkers Bay Sports Wear, UAE. The learned Counsel also stated that the remaining amount has also been received after

receipt of the show cause notice. However, he could not produce any evidence to that effect. It was, therefore, argued that since they have already received the entire sale proceeds of the export consignments, therefore, the allegation of exporting substandard clothes claiming higher drawback does not stand on the basis of repatriation of the export price as declared in the shipping bills. It was also argued that M/s Neelam Export got the fabrics purchased from M/s Krishna Enterprises and M/s Cosy Fashion and the fabrics were got stitched through Mr. Pawan Kumar. Shri B.G.Goswami (the present appellant) paid Rs. 72 to Rs. 75 lacs to Shri Pawan Kumar for the goods exported by M/s Neelam Exports. The goods were packed in packing material purchased from M/s Matta Packaging Industries and M/s Suraksha Plastic. The bills for purchase of these goods were produced before the investigating officer. Payments were also made to M/s Krishna Enterprises and M/s Cosy Fashion out of the exports proceeds. Therefore, the entire allegation of the department that they have exported substandard material and over invoiced the value of the goods is not substantiated. Therefore, unconditional stay from recovery of the penalty may be given.

4. On behalf of the revenue, it was argued that the documents/bills produced by the applicant for purchase of packaging material from M/s Matta Packaging Industries were found to be fake as Shri Gurdeep Singh, Prop, of M/s Matta Packaging Industries in his statement stated that he never sold the material to M/s Neelam Exports either directly or through any broker. The addresses of M/s Surakshya Plastic, M/s Krishna Enterprises and M/s Cosy Fashion were found fake as no firms exist at the given address. The present applicants Shri B.G. Goswami could not produce Shri Pawan Kumar to whom he has given more than Rs. 75 lacs nor he has his address telephone number or knowledge of his whereabouts. On the contrary, the investigation done by the officer of Directorate General of Revenue Intelligence clearly establishes that the goods in question were supplied by Shri Arun Kumar Vij from his godown at Sagarpur from where these were transported to ICD, Tuglakabad in the vehicles and the owners/incharge of the vehicles confirmed in their respect statements that they have transported the goods from the godown of Shri Arun Kumar Vij at Sagarpur to ICD, Tugalakabad. Shri Arun Kumar Vij clearly stated that the garments which were exported by M/s Neelam Exports were sold @ Rs. 12/- per piece in cash and

for the 33000 pieces of garments be received amount of Rs. 3,96,000/-. Thus, the investigating officer have been able to establish the owner of the garments who sold them for export and which were exported by M/s Neelam Exports. These garments were sold @ Rs. 12/- per piece and the transporters who have transported goods from the godown of Sh. Arun Kumar Vij at Sagarpur to ICD, Tuglakabad had confirmed the transport of the garments to ICD, Tuglakabad for export by M/s Neelam Exports. Thus, the market value of the garment was much less than the amount of drawback claimed by M/s Neelam Exports. It was also pointed out that during investigation inquiries were made from the Reserve Bank of India and Reserve Bank of India confirmed that amount of Rs. 14,06,700/- and Rs. 30,45,000/- are outstanding against shipping bill No. 1039940 and shipping bill No. 1039942 of M/s Neelam Exports respectively and no extension of time was given by the Reserve Bank of India to realize the export proceeds and no post facto approval was sought by the exporters.

Foreign exchange remittance amounting to US$ 129150 against two shipping bills were received after eleven months after export and US$ 2550 and US$ 40000 were received after a delays of 17 months and 21 months respectively beyond the normal period and Reserve Bank of India has not given any approval for the proceeds received after a period of six months. Thus, the claim of the applicant that they received the sale proceeds of the garment has not been approved by the Reserve Bank of India.

5. We have considered the submissions made by both the sides. We find that under Section 76(1)(b) of the Customs Act no drawback shall be allowed in respect of any goods, the market value of which is less than the amount of drawback due thereon. The applicant had failed to establish that they got the garments stitched from the fabrics purchased from M/s Krishna Enterprises and M/s Cosy Fashion as these firms were not found in existence. The claim of the applicant that the stitching of fabrics was got done by Shri Pawan Kumar and these were packed in the packing material purchased from M/s Matta Packaging Industries and M/s Surakshya Plastics is also not established. Shri Pawan Kumar was never produced by the applicant. M/s Matta Packaging Industries confirmed that they had not sold the packaging material. The bill of the sale of packaging

material by M/s Matta Packaging Industries produced by the applicants was found fake by the Proprietor of M/s Matta Packing Industries, M/s Surakshya Plastic were not found in existence. Thus, the applicant has totally failed to establish that they got the garments stitched or packed. On the contrary, it has been established by the investigation that Shri Arun Kumar Vij has sold the sub-standard garments @ Rs. 12/-per piece and these garments were transported from Sagarpur godown of Shri Arun Kumar Vij to ICD Tuglakabad for export by M/s Neelam Exports. The persons who have transported these goods have clearly stated that these goods were exported by M/s Neelam Exports. Therefore, the finding of the adjudicating authority are based on the facts and relevant material on record. It is also found by the Commissioner that the Reserve Bank of India has not granted extension to realize the export proceeds and no post facto approval was sought by the exporter. Therefore, it is prima-facie establish that the garments which were exported were purchased by Sh. B.G. Goswami, Proprietor of M/s Neelam Exporters @ Rs. 12/- per piece and the total value paid for the entire export consignment was Rs. 3,96,000/- whereas drawback of Rs. 2060348/- has been claimed and got credited in their account by M/s Neelam Exports.

6. Therefore, we direct M/s Neelam Exports to immediately pay back the amount of Rs. 2060348/- for which no stay has been sought nor we grant waiver of pre-deposit of this amount. Shri B.G. Goswami is also directed to pre-deposit the amount of Rs. 2 lacs for hearing the appeal. The above amounts be deposited within the period of eight weeks and compliance be reported on 7.8.2006. On such pre-deposit, the recovery of penalty of Rs. 2 lacs imposed on M/s Neelam Exports is stayed for hearing the appeal. If both the amounts i.e. duty drawback amount of Rs. 20,60,348/- and penalty of Rs. 2 lacs are not deposited within the stipulated period then the appeal shall stand dismissed.