

Polyplex Corporation Ltd. Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-14-2007

Reported in : (2007)(116)ECC520

Judge : N T C.N.B., M Ravindran

Appellant : Polyplex Corporation Ltd.

Respondent : C.C.E.

Judgement :

1. The appellant registered a Project Import Contract with the Customs Authorities at Bombay in 1986. The project was for setting up a polyester filament manufacturing plant. Imports under the contract were made from 1986 to 1988 and goods cleared at the lower rate as applicable to imports under Project Import. The assessments were provisional against bond executed by the appellant. The project was completed also by installing the imported machinery.

2. In 1999, a SCN was issued alleging that the appellant had not filed reconciliation statement as required under Clause 7 of the Project Imports Regulations, 1986 as amended in 1992 and for that reason exempted lower duty rates originally applied the imported goods were not available. The notice, proposed to demand the differential duty. It may be noted that Clause 7 was incorporated in 1992, much after the imports under the impugned contract had taken place. The appellant did not receive copy of the SCN. No reply was filed. Therefore, in an ex-parte adjudication, order was passed by deregistering the

contract, assessing the imported goods at normal rates of duty and demand the differential duty.

3. The appellant came to know of the duty demand when detention order for recovery of demand under Section 142 of the Customs Act was received. Thereupon, an appeal was filed before the Commissioner. In addition to contending that Rule 7 of the Project Imports Regulations did not apply in this case, it also submitted a reconciliation statement, pleading that the said statement may be taken on record and assessments finalized at the concessional rate.

4. Under the impugned order, Commissioner rejected the appellant's submission and held that duty demand was sustainable. As regards failure to file a reconciliation statement, the Commissioner held that even in the case of a procedural violation, benefit is to be denied in the light of the ruling contained in the judgment of the Hon'ble Supreme Court in the case of *Mihir Textiles v. CC*. The Commissioner also held that since under a Public Notice dt. 14.3.88, there was requirement to file a reconciliation statement that requirement, though introduced under Rule 7 of the Project Imports Regulation in 1992, applied to the earlier imports also. The Commissioner also rejected the appellant's submission that the ruling contained by the Judgment of the Hon'ble Supreme Court in the case of *Mangalore Chemicals and Fertilizers v. Dy. Commissioner* was appropriate in the present case in as-much as a substantial relief should not be denied for the non-satisfaction of a procedural requirement of no consequence.

5. We have perused the record and heard both sides. The issue is whether the appellant forfeited project import benefit initially extended to it on account of the failure to file the reconciliation statement. A perusal of the regulation shows that filing of the reconciliation statement is not one of the conditions for 'eligibility'. There is no dispute that the appellant was eligible for the benefit under Regulation 4. Therefore, denying of the benefit was not justified. We also find that the ruling of the Hon'ble Supreme Court in the case of *Mihir Textiles (Supra)* is not attracted to the appellant's case eligibility is not in question. In the case of *Mihir Textiles*, the appellant importer had not become eligible for exemption for want of registration of the Project Contract. To the present case the ruling in *Mangalore Chemicals &*

Fertilizers Ltd. (supra) would appropriately be attracted. Hon'ble Supreme Court ruled as under: 11... There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purpose they were intended to serve.

6. It is very clear from the above ruling that it is erroneous to attach equal importance to the non-observance of all conditions, irrespective of the purpose they were intended to serve. In the present case, the purpose of the statute was to grant a beneficial rate of duty to goods imported for setting up a new project. The appellant's was such a project and the appellant had satisfied the condition for eligibility. Regulation 7 which came into force much after the imports were over, was only to facilitate finalisation of provisional assessment. It did not have any effect on the eligibility to the lower rate of duty. We also find that same issue had come before this Tribunal in the case of Gas Authority of India Ltd. 2003 (159) ELT. 468 and this Tribunal held that the assessments are required to be finalized in terms of the project contract and deregistration of contract and recovery of duty were not warranted.

7. In view of what is stated above, we set aside the impugned order.

The case is remitted to the original authority for finalizing the assessment in terms of the project contract in the light of the reconciliation statement filed. The appeal is ordered accordingly.

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