

Sharp Menthol India Limited Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-16-2007

Reported in : (2007)(118)ECC294

Judge : P Das

Appellant : Sharp Menthol India Limited

Respondent : Cce

Judgement :

1. In this case, the Commissioner of Central Excise allowed the extension of the period of issue of show cause notice, required to be issued under Section 124 of the Customs Act, 1962, by another six months under proviso to Sub-section (2) of Section 110 of the said Act.

2. The relevant facts of the case, in brief are that the appellants are engaged in the manufacture and export of Menthol Crystal and Essential Oils (Pharmaceutical grade) falling under tariff item No. 30039021 and 33012400, 33012510 etc. of Central Excise Tariff Act, 1985. The Central Excise Officers on 18.7.2006 seized 1938 drums of Mentha Piperata oil and other goods from their godown. The appellants vide letter dated 18.8.2006 and 21.8.2006 requested to the Additional Director General of DGCEI to release the said goods as the same was meant for export as per pending order with them. It is seen from the letter dated 19.09.2006 of the Additional Director General addressed to the Commissioner of Central Excise recommended that 907 drums may be released provisionally as its identity

was confirmed by the test report of I.I.T. (Department of Chemistry), Delhi. The appellant was advised to approach to the Commissioner of Central Excise for release of the goods as the case is falling within the adjudication power of the Commissioner. A show cause notice dated 10.01.2007 was issued by the Additional Director General proposing for extending the stipulated period of six months by another six months, for issue of the show cause notice under the proviso to Section 110(2) of the Customs Act, 1962 as made applicable to the Central Excise matter vide Notification No. 68/63-CE dated 04.05.1963 issued under Section 12 of the Central Excise Act, 1944. The Commissioner of Central Excise by the impugned order dated 16.01.2007 extended the period for issue of the show cause notice by another six months under proviso to Sub-section (2) of Section 110 of the Customs Act, 1962.

3. The learned Advocate on behalf of the appellant submits that the goods were meant for export and therefore, the seizure of the goods should be lifted within seven days from the date of seizure. He referred to para 2.42.1 of Foreign Trade Policy 2002-2009. He submits that in this situation, proviso to Section 110(2) of the said Act cannot be invoked. He further submits that the department failed to show any sufficient cause for extension of the time for release the balance quantity of 1031 drums meant for export. He also submits that the test report of CIMAP and FFDC are in their favour and the test report of IIT, Delhi was not disclosed to them. He relied upon the decision of the Hon'ble Supreme Court in the case of Manick Chand Paul and Ors. etc. v. Union of India and Ors. Weston Components Ltd., v. CC, New Delhi reported in 2005 (115) ELT 278 (SC). He submits that the appellant has already incurred huge loss due to illegal seizure of the export goods and therefore, goods may be released unconditionally.

4. The learned authorized representative (DR) on behalf of the respondent reiterates the findings of the Commissioner. He submits that there is no evidence that the goods are meant for export and therefore, the provisions of foreign Trade Policy 2004-09 are inapplicable. He also submits that it is revealed from the adjudication order that the investigation is incomplete and the Commissioner is justified for extension of the period.

5. After hearing both the sides and on perusal of the records, the relevant provisions of Section 110 of the Customs Act 1962 are reproduced below: Section 110- Seizure of goods, documents and things- (1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods: Provided that xxx xxx xxx (2) Where any goods are seized under Sub-section (1) and no notice in respect thereof is given under Clause (a) of Section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized.

Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Commissioner of Customs for a period not exceeding six months.

6. On plain reading of the above provisions, it is clear that Sub-section (1) of Section 110 has given power that the proper officer "may seize" the goods on reason to believe that the goods are liable to confiscation. Sub-section (2) of Section 110 of the said Act, provide that the seized goods "shall be returned" to the person from whose possession they were seized, within six months when no notice under Section 124 of the Act is issued. So, it is a right of the citizen to get back his goods or property if no notice is issued within six months of the seizure of the goods. Proviso to Sub-section (2) of Section 110 of the said Act has given a power to the Commissioner of Customs may extend further six months on sufficient cause being shown, which is quasi-judicial power. Section 110 of Customs Act, 1962 envisaged both sides of the coin in as much as the power of the customs officer to seize the property of the citizen and the right of the citizen to get back his property. The extension of time limit of another six months in terms of proviso to Sub-section (2) of Section 110 of the Act affects the right of the citizen and therefore, the Revenue is liable to show sufficient cause with a definite and cogent reasons.

7. In this case, it is revealed from the letter dated 19.09.2006 of the Additional Director General of DGCEI, that they did not dispute contention of appellants that 1938 drums of Mentha Piperata were meant for export. They recommended for provisional release of 907 drums out of 1938 drums of the said goods. Show

cause notice dated 10.01.1997 was issued for extension of time by six months in respect of release of balance quantity of 1031 drums. In adjudication order, the Commissioner agreed that the appellants cannot be held responsible for non-appearance of the other persons and also observed that as per show cause notice the appellants have also not been held responsible. There is no material placed by the authorities that the appellants are any way responsible for the delay of investigation in any manner. The adjudicating authority observed that the entire exercise of testing itself has consumed lot of time. The adjudicating authority in the impugned order directed the appellants to pursue with the investigating agency for provisional release. It is pertinent to note that the investigating agency by their letter dated 19.9.2006 directed the appellant to approach to the Commissioner for provisional release of 907 drums and refuse to release the balance quantity of 1031 and issued show cause notice. At this event, the direction of the Commissioner that the appellants may pursue the provisional release with the investigating agency and on the other hand, ordered to extend the period for issue show cause notice by another six months under proviso to Sub-section (2) of Section 110 of the Customs Act, are totally contradictory, inconsistent and extraneous.

8. In view of the above, I do not find any reason for extension of time by six months under the proviso to Sub-section (2) of Section 110 of the said Act. It is revealed from the letter of the appellant dated 17.08.2006 addressed to the Additional Director General of DGCEI that the seized goods of 1938 drums have been purchased by them from traders against Form 'H' which were issued by the sales tax authorities for the purpose of export. This contention of the appellant was not disputed by the authority at any point of time and, therefore, the seized goods are liable to be released in pursuance of the provision of Foreign Trade Policy 2004-09 as under: Consignments of items meant for exports shall not be withheld/delayed for any reason by any agency of the Central/State Government. In case of any doubt, the authorities concerned may ask for an undertaking from the exporter.

No seizure of stock shall be made by any agency so as to disrupt the manufacturing activity and delivery schedule of export goods. In exceptional

cases, the concerned agency may seize the stock on the basis of prima facie evidence. However, such seizure should be lifted within 7 days.

9. In this connection, it is noted that the Hon'ble Supreme Court in the case of Weston Components Ltd. (supra) held that redemption fine may be imposed even after release of the goods on execution of bond.

Mere fact that the goods were released on the bond would not take away the power of the Customs Authorities to levy redemption fine if subsequent to release of goods import was found not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods.

10. In the facts and circumstances of the case. I modify the impugned order and direct the Commissioner to release the seized goods forthwith upon undertaking from the appellant as per aforesaid provisions of the Foreign Trade Policy 2004-09. At this stage, the learned DR submits that the release of the goods shall not take away the rights of the authority to issue the show cause notice. Needless to say, the show cause notice may be issued even after release of the seized goods in accordance with law. I make it clear that this order is passed without going into the merits of the case as the matter is pending before the investigating agency. Thus, the appeals are allowed in the above terms.

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