Goodwill Clothing Co. Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Ahmedabad

Decided On : Nov-27-2007

Reported in : (2008)(127)ECC126

Judge : A Wadhwa, V T M.

Appellant : Goodwill Clothing Co.

Respondent : Cc

Advocate for Pet/Ap. : Shri. J.C. Patel

Judgement :

1. As per facts record, the appellant herein M/s goodwill Clothing Co.

were issued two advance licenses for duty free import of goods, in terms of Notification No. 203/92-Cus. dt. 19.5.92. In as much as the said advance licenses are transferable, they were transferred by the appellant to one M/s Verma Chemicals, who imported the goods under the authority of the same. Subsequently, the appellants were issued two chow Cause Notices raising the demand of duty against them on the ground that the condition of notification No. 203/92 as regards non-availment of Modvat Credit in respect of the input used in their exported product to not stands fulfilled. The said demands were confirmed product do not stands fulfilled the said demands were confirmed against the appellant and penalties imposed. Hence the present appeal.

2. After hearing both sides duly represented by Shri J.C. Patel learned advocates for appearing for the appellant and Dr. M.K. Rajak, learned SDR appearing for the Revenue, we find that the appellant made exports, in terms of notification No. 203/92- Cus dt. 19.5.92 and was given advance licenses for duty free imports. On fufillment of export obligation, these advance licenses became transferable and the same were passed to one M/s Verma Chemicals who imported Toluene'.

Subsequently, proceeding were initiated against the appellant for denial of duty free imports on the ground that at the time of exports, though they have made declaration that no modvat credit was availed by supporting manufacturer, enquires reveal that the same was actually availed.

3. The above order stands assailed by the appellant on two grounds-(i) When the appellant was not the importer of the goods, the duty liability, if any, would rest on the actual importer and not on the appellant who already sold the advance licenses, after fulfilling the export obligation. For the above proposition, reliance has been placed on the Bombay high Court decision in the case of C.C. (E.P.) v. Jupiter Exports 2007 (213) ELT 641 (Bom.) The Hon'ble court in para 23 of their judgment has held that import duty could be recovered from the transferees of the advance licenses, who actually imported the goods.

Inasmuch as the respondents before the Hon'ble High court was himself an imports but was not the transferer of the advance license, the Hon'ble High Court has held that no demand of duty can be confirmed against him in case of the import made against the advance licenses by the transferees of the goods. It has further been argued that in any case, the appellant, at the time of export had made declaration that no modvat credit stands availed by them. To the same effect was the declaration by the merchant manufacturer. Subsequent enquiries conducted by the reverse are in the nature of a report dated 22nd August, 2000 given by the Superintendent which also admits that there is nothing on record to correlate the taking of the modvat credit by the merchant manufacturer with the involved shipping bills and advance licenses. As such, it has been strongly argued that there was no evidence to correlate taking of modvat credit availed in respect of inputs used in the exported goods.

4. We are fully agree with the learned advocate that the importer being M/s Verma Chemicals, duty if at all has to be recovered from him and the appellant who had already fulfilled their export obligations -transferred the advance licenses, cannot be made liable to pay the duty in respect of the imports effected by M/s Verma Chemicals, in the light of the law declared by Hon'ble Mumbai High Court in the case of Jupiter Exports, referred supra.

5. As regards the fact of availment of modvat credit of duty on the input by the merchant manufacturers, we find that there is no concrete evidence on record to show that such credit was availed by the merchant manufacturer M/s Chetna Polytex (P) Ltd. The entire case of the Revenue is based on one letter dt.22.8.00 written by the office of the Dy.

Commissioner, Central Excise, Bhiwadi to the Commissioner. For better appreciation, we reproduce relevant paragraph of the said letter: M/s Chetna Polytex (P) Ltd., A-105, Phase-I, Indl. Area, Main Road, Bhiwadi is a registered manufacturer working under the charge of this Division. The record of the unit was examined vis-a-vis contents of your letters mentioned supra and it was found that the unit has decreed goods for export under AR-4 No. 1/94-95, dt. 24, 10.94 and AR-4 No. 2/94-95 dt 17.1.95, through their agent M/s Goodwill Clothing Co. M-105, Connaught Place, New Delhi and AR-4 No. 3/94-95 Dt. 24.52.95 through their agent M/s PCL Exports, M-105, Connaught Place New Delhi. Since the relevant AR-4 do not incorporate, details regarding advance licencees, therefore it is not possible to ascertain whether the said exports were made against obligation of impugned advance licences. however, reversal of modvat credit in all three instances was done and details are as per annexure to this letter.

Since the copies of relevant Shipping bills and advance licences are not available with the concerned Range office, the supporting manufacturer is being asked to supply a copy of the document and further report will be sent to you in due course of time.

6. As is clear from the above paragraphs, the Supdtt. himself is not sure about the Co-relation between the relevant A-84 under the cover of which exports have been made and the Modvat Credit availed by the merchant manufacturer. In any case, it

has come on record that even if the Modvat Credit was available, the same was reversed by the said manufacturer. As such, we do not find any merit in the second ground of the Revenue, to deny the benefit of notification.

7. In view of the foregoing, we aside the impugned order and allow the appeal with consequential relief to the appellant.