

Flexo Polymers Pvt. Ltd. Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-17-2007

Reported in : (2008)(127)ECC191

Judge : J Balasundaram, Vice-

Appellant : Flexo Polymers Pvt. Ltd.

Respondent : Cc

Judgement :

1. The brief facts of the case are that, M/s Alfa International, who was engaged in export of auto parts, namely, 'Crank Shafts for High Speed Compressor', fraudulently substituted/declared the export item as 'Timing Shafts for Mercedes Truck' to avail higher export incentive under the Duty Entitlement Pass Book Scheme. The investigation revealed that, the export items have been mis-declared and that M/s Alfa International has obtained DEPB scrips by making fraudulent representation/mis-statement/substitution of shipping bills in order to avail higher DEPB benefit. The DEPB scrips, so obtained, were transferred/sold to various importers to utilize the same for paying the customs duty against their imports and to avail exemption from Special Additional Duty of Customs. Show cause notice was issued on this basis to M/s Alfa International proposing imposition of penalty.

Show cause notice was also issued to the appellant herein, M/s Flexo Polymers (P) Ltd., for recovery of duty of Rs. 4,51,830/- and for confiscation as well as for imposition of penalty. Notices were also issued to others proposing imposition of

penalty. The adjudicating authority held that, the goods imported vide Bill of Entry dated 02.11.2000 by M/s Flexo Polymers (P) Ltd. were liable to confiscation, but permitted redemption on payment of fine of Rs. 50,000/-. He also ordered recovery of duty of Rs. 1,68,849/- from the appellants herein together with interest due under Section 28AB of the Customs Act, 1962, and imposed penalty on M/s Alfa International and others; however, he refrained from imposing any penalty on M/s Flexo Polymers (P) Ltd. on the ground that, there is nothing on the record to infer that the appellants herein, who has purchased the freely transferable DEPB scrips otherwise in a bonafide manner and utilized the same towards debit/exemption from duty, have colluded with the exporter who obtained the DEPB Scrips by fraudulent means. This order was appealed against before the Commissioner (Appeals), who upheld the duty demand against the appellants, but set-aside the redemption fine imposed on the ground that, since the goods were cleared for home consumption, the same were not available for confiscation. M/s Flexo Polymers (P) Ltd. has filed the above appeal against the confiscation and levy of duty, while the Revenue is in appeal against the setting-aside of the redemption fine in lieu of confiscation.

2. I have heard both sides and perused the record. There is no dispute that M/s Alfa International obtained DEPB Scrips by fraudulent means, but there is also no dispute that DEPB Scrips were not forged documents. Both the authorities below have held that, since DEPB Scrips were obtained by fraud, they were void ab initio and no benefit, therefore, could have been availed of by M/s Flexo Polymers (P) Ltd. For this purpose, the authorities below have relied upon the decision of the Hon'ble Calcutta High Court in the case of ICICI India Ltd. v. Commissioner of Customs (Port), Calcutta , holding that, credit is available on the strength of a valid DEPB only, and if the same is forged, it is non est and, therefore, there is no valid DEPB and no credit of duty can be derived thereunder. This judgment has been upheld by the Apex Court as . On the other hand, the learned Counsel for Flexo Polymers (P) Ltd. draws my attention to the judgment of the Hon'ble Punjab & Haryana High Court in the case of CC, Amritsar v. Leader Valves Ltd. , which has been followed in the case of Commissioner of Customs, Amritsar v. Vallabh Design Products 2007 (219) ELT 73 (P&H). The Hon'ble Punjab & Haryana High Court has held that, if DEPB scrip is issued on the basis of a forged document and is,

therefore, cancelled, but the assessee is not a party to the fraud and had purchased the DEPB scrip from the open market in the bonafide belief of its being genuine, then even if at a later stage the DEPB scrip has been found to be fabricated and obtained on the basis of a forged document, the assessee could not be deprived of the benefits legitimately available to them. The distinction that learned Counsel seeks to make between ICI India Ltd. v. Commissioner of Customs (Port), Calcutta, judgment, supra, of the Hon'ble Calcutta High Court and these decisions of the Hon'ble Punjab & Haryana High Court is that, the basic document, namely, DEPB scrip/licence itself was found to be forged, while in the cases before the Hon'ble Punjab & Haryana High Court, the DEPB scrips were obtained on the basis of a forged documents. In other words, in the case of CC, Amritsar v. Leader Valves Ltd. and Commissioner of Customs, Amritsar v. Vallabh Design Products (supra), the authenticity of the DEPB scrip was not in dispute. I also note that in the case of ICICI India Ltd. v. Commissioner of Customs (Port), Calcutta (supra), relied upon by the Revenue, the Hon'ble Calcutta High Court has distinguished the judgment of the Hon'ble Apex Court in the case of United India Insurance Company on the ground that in United India Insurance Company's case the insurance policy was not found to be forged, but was obtained on the basis of the forgery relating to the driving licence driver engaged by the insured. The Hon'ble Calcutta High Court has held that the question would be different if the document itself on the strength whereof credit is claimed is forged. If the DEPB is forged, then the same has been held to be non est and, therefore, there is no valid DEPB. I find that in the present case the situation is akin to the facts in the case of CC, Amritsar v. Leader Valves Ltd. (supra) and Commissioner of Customs, Amritsar v. Vallabh Design Products (supra), namely, that the basic document i.e DEPB itself is not a forged document, but has been obtained by fraud/forgery. In these circumstances, I find force in the submission of the learned Counsel that the decision of the Hon'ble Calcutta High Court in the case of ICICI India Ltd. v. Commissioner of Customs (Port), Calcutta (supra), is distinguishable on facts and that the judgments of the Hon'ble Punjab & Haryana High Court in the case of CC, Amritsar v. Leader Valves Ltd. (supra) and Commissioner of Customs, Amritsar v. Vallabh Design Products (supra), are squarely applicable to the facts of the present case.

3. Following the ratio thereof, I set aside the impugned order and allow the appeal. In this view of the matter, the Revenue's appeal fails and accordingly dismissed. In the result, the appeal No. C/476/07 is allowed and appeal no. C/553/07 is rejected.

(Dictated and pronounced in the open Court on the 17th day of December, 2007)

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