Merry Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-07-2008

Reported in : (2008)(128)ECC35

Judge : M Ravindran, A T K.K.

Appellant : Merry

Respondent : Commissioner of Central Excise

Judgement :

1. The appellant a SSI Unit is engaged in the manufacture of readymade garments which were manufactured under their brand name "Merry" as also under the brand name belonging to M/s. A-La Mode Exports and M/s.

Twinkle International. The readymade garments manufactured by them carrying the brand name of A-La Mode Exports and Twinkle International were cleared to the above two brand name owners who are merchant exporters, without payment of duty. M/s. A-La Mode Exports and Twinkle International after receiving the goods from the appellants exported them and as a proof of export they furnished Form-14B prescribed under the Sales Tax Law) and Bills of Lading. Since the appellants have themselves not exported the goods manufactured by them and the goods carried the brand name belonging to A-La Mode Exports and Twinkle International, a show cause notice was issued to them stating that they were required to pay duty in respect of ready made garments carrying brand name of other two persons amounting to Rs. 67,33,211/- alongwith interest and also

proposed penalty under Section 11AC and Rules 173Q of Central Excise Rules. The show cause notice was adjudicated by the Commissioner who confirmed the duty amounting to Rs. 67,33,211/- along with interest and imposed a penalty of equivalent amount under Section 11AC read with Rule 25 of the Central Excise Rules.

2. The ld. Advocate for the appellants submits that the duty has been demanded from them only on the ground that the goods were not directly exported from their premises but were exported from the premises of the two merchant exporters. The Commissioner has placed reliance on the Board's Circular No. 648/39/2002 - CX dated 25.07.2002 wherein it was clarified that the facilities of simplified procedure for exempted units is available only in respect of those exempted units which exports themselves or through merchant exporters directly from the unit itself. The Commissioner has also referred to the procedure prescribed in Part 3 of Chapter 7 of CBEC manual of supplementary instructions which requires that besides filing declaration etc. in case of export through merchant exporters the invoice and other clearance documents should mention on top "Export through merchant exporters" and Export - Import code of such merchant exporters. It was submitted that though these words "export through merchant exporters" were not written on the invoices but "for export" was written, which made it clear that the goods were meant for export. The ld. Advocate invited our attention to para 27 of the Order-in-Original wherein Commissioner has very clearly observed that the appellants have made strenuous efforts to show that the goods manufactured were exported but unfortunately the issue here is not whether the goods were exported or not. The issue is whether the noticee is entitled to clear the goods without payment of Central Excise duty from his factory. Since the assessee has not followed the prescribed procedure under Rule 19, he cannot clear the goods without payment of duty as following the prescribed procedure was a substantial requirement. It was submitted that the fact that the goods were exported is not in dispute. Once the goods have been exported duty cannot be demanded on the basis of circular issued in 2002. This circular even otherwise deals with the representation received from the SSI unit that simplified procedure should be extended to them also providing for acceptance of sales tax documents as proof of export for supplies made to other domestic manufacturer who use such goods in

manufacture/packing of the goods for export and accordingly it has nothing to do with the exports made by the exempted unit and merchant exporters. They referred to the decision of the Tribunal in the case of Vadapalani Press v. CCE, Chennai the 2002 circular was discussed and it was held that it nowhere requires that unless the exports are directly made from the unit itself the exemption cannot be claimed. Attention was also invited to the decision of the Tribunal in the case of CCE v. International Corrugators reported in 2005 (191) ELT 742 (Tri. Del) wherein corrugated cartons supplied by the assessee for packing export shoes by the exporters were not considered as supply for domestic clearances and accordingly were not held to be taken into account for working out clearances for eligibility to SSI exemption under Notification No.8/2000-C.E. It was submitted that this decision was followed by the Tribunal in the case of Radhey Paper Udyog final order No.114-115/2005-B dated 27.01.2005. Reference was also invited to the Tribunal's decision in the case of Benara Bearings Pvt. Ltd. 1999 (105) ELT 398 (Tribunal) wherein the delay in filing H form as a proof of export was held to be relaxable once the evidence regarding proof of export was submitted. Similarly in the case of Affan Shoes (P) Ltd. it was held that though excise levy is on production and manufacture, its recovery is deferred by law till entry of goods in domestic market and Revenue has to establish that the goods have entered into domestic market even goods for which no procedure has been followed. Procedure lapses were also condoned and rebate in respect of goods exported was held admissible by the Tribunal in the case of Alpha Garments . Even non-furnishing of bond or letter of undertaking as required under Notification No. 42/2001 (NT) issued under Rule 19 of Central Excise Rules, 2002 were held not sufficient to demand duty once the export of the goods was not in doubt.

2.1 The ld. DR however submits that the procedures prescribed under the Basic Excise Manual or circular are mandatory and cannot be relaxed. He also pointed out certain discrepancies regarding description of goods in the shipping bills and the invoices issued by the assessee regarding the subject goods to state that the goods export not that one and the same.

3. We have considered the submission. We find that though the Commissioner has referred to some discrepancies in the export documents in para 26 of his

order, he has in para 27 not questioned the export of the goods but has only held that since prescribed procedure was not followed for export of goods could not have been cleared without payment of duty. The discrepancies pointed out by him relates to some additional items mentioned in the shipping bill. These were explained by the ld. Advocate for the appellants as additional items procured by the merchant exporter through some other manufacturers and was in addition to the garments received from the appellant. The number of pieces mentioned in the invoices and in the shipping bills tally with each other. We find the other items are additional items which cannot mean that the goods in question were not exported. Once the goods have been exported then mere not mentioning of the words "export through merchant exporters" cannot result in demand of duty as there is no evidence to show that the goods have been cleared for domestic consumption and have not exported at all. In view of the same, we set aside the order of Commissioner and allow the appeal.