Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench : Ahmedabad

REGIONAL BENCH - COURT NO. 3

Customs Appeal No. 201 of 2011

[Arising out of Order-in-Original No OIO-KDL/COMMR/24/10-11 dated 09.03.2011 passed by Commissioner of Central Excise & ST, Kandla]

M/s. Vinay Solvent Extraction Ind. Pvt. Limited .... Appellant
Outside Majevdi Gate,
JUNAGADH
GUJARAT

VERSUS

Commissioner of Customs, Kandla .... Respondent
CUSTOM HOUSE,
NEAR BALAJI TEMPLE,
KANDALA – GUJARAT

WITH

(i) Customs Appeal No. 225 of 2011 (Gujarat Ambuja Export Limited) (ii) Customs Appeal No. 230 of 2011 (Gujarat State Processing Coop. Federation Limited) (iii) Customs Appeal No. 231 of 2011 (Gokul Refoils & Solvents Limited) (iv) Customs Appeal No. 246 of 2011 (Bunge India Pvt. Limited) (v) Customs Appeal No. 263 of 2011 (Aanal Alluminium Pvt. Limited) (vi) Customs Appeal No. 264 of 2011 (BR Metal & Alloys Gujarat Pvt. Limited) (vii) Customs Appeal No. 265 of 2011 (Metal Trade Corporation) (viii) Customs Appeal No. 12 of 2012 (Samay Impex Pvt. Limited)

[Arising out of Order-in-Original No OIO-KDL/COMMR/24/10-11 dated 07.03.2011 passed by Commissioner of Central Excise & ST, Kandla]

APPEARANCE :

Shri SJ Vyas, Shri Anand Nainawati, Shri R. Subramanaya, Shri Rakesh Jain, Advocates and Shri P.P. Jadeja, Consultant for the Appellants
Shri Sameer Chitkara, Additional Commissioner (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

FINAL ORDER NO. A/10849-10857 / 2019

DATE OF HEARING : 08.05.2019
DATE OF DECISION: 08.05.2019

RAMESH NAIR

The issue involved is whether the appellant who is an importer and imported goods against DEPB license purchased, which was subsequently found to be obtained fraudulently and cancelled by DGFT, the appellant is liable for payment of Customs duty or otherwise.

2. Ld. Counsels argued on merits as well as on limitation. He submits that since the appellants are bonafide buyer and there is no allegation of suppression of facts and mis-declaration etc. against the appellants, demand by invoking extended period is not sustainable. He relied on the following judgments:-

(a) CC, Mumbai vs. Coromandal Fertilizers Limited Order Dated 10.03.2017 Passed by CESTAT, Mumbai

(b) TVS Motors Company Limited vs. CC - 2018 (1) TMI 775-CESTAT Chennai

(c) CC vs. Vallabh Design Products - 2007 (219) ELT 73 (P&H) Affirmed by the Hon'ble Supreme Court of India - 2016(341)ELT A222(S.C)

(d) Sun Chemicals vs. CC - 2017 (358) ELT 1120 (T)

(e) Sumit Wool Processors India Pistons Limited vs. CC – 2015 (10) TMI-329-CESTAT MUMBAI

(f) CC vs. Sneha Sales Corporation - 2000 (121) ELT 577 (S.C)

(f) East India Commercial Co. Limited vs. CC - 1983 (13) ELT 1342 (S.C)

3. Shri Sameer Chitkara, Ld. Additional Commissioner (AR) appearing for the Revenue reiterates the findings of the impugned order. He submits that there is no dispute that the DEPB licenses were obtained fraudulently, hence fraud vitiate everything. Therefore, extended period is rightly invoked.

4. Heard both sides and perused the record. We find that in all these appeals the demand was raised by invoking extended period under the proviso to Section 28 of Customs Act. On perusal of the impugned order, we find that there is allegation of fraud against the exporter and there is no allegation against the importers. It is also a fact that the importers have

bonafide purchaser of the DEPB license without knowing any fraudulent act committed by the exporter. Therefore, while purchasing DEPB license, the appellants were not aware of any fraud committed by the exporter, and therefore there is no suppression of fact or mis-declaration on the part of the importers. This Tribunal on the identical issue passed an order in the matter of *CC, Kandla vs. Mantora Agro Industries & Others,* vide order No. A/11391-11401/2018 dated 11.07.2018, wherein relying on the various judgments, it was held that in the facts and circumstances, extended period of limitation cannot be invoked. Operating portion of the order is reproduced below:-

> "**6.** In view of the above findings of the Hon'ble High Court, being same set of facts in the present cases, the demand of extended period is not sustainable. Since in all these cases the demand was raised beyond the normal period of one year, the same set aside by the Ld. Commissioner (Appeals) on the ground of limitation which deserve to be upheld. Since we are deciding these appeals only on the ground of limitation, we do not incline to address the merit of the case. Accordingly, all the impugned orders are upheld and Revenue's appeals are dismissed. Cross Objection also stands disposed of."

5. Since the Tribunal has already taken a view in the identical facts of purchase of DEPB license and imports thereunder and that no suppression of facts can be attributed to the importers. Therefore, demand in these appeals involving extended period cannot be sustained on limitation. Accordingly, all the impugned orders are set-aside and the appeals are allowed only on limitation without going into merits.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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