

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I**

APPEAL Nos.C/70319-70326/2016-CU[DB]

(Arising out of Order-in-Original No. 07/Cus/Commr./Noida/2015 dated 13/08/2015 passed by Commissioner of Customs, Noida)

- 1) M/s Bharat Udyog,**
- 2) Suresh Pal,**
- 3) Harvinder Singh,**
- 4) Grape Marketing Pvt. Ltd.,**
- 5) Chetan Jain Director,**
- 6) Lalit Gupta,**
- 7) Manish Gupta &**
- 8) Raman Gupta,**

Appellants

Vs.

Commissioner of Customs, Noida

Respondent

Appearance:

Shri S. Sunil, Advocate
Shri Pawan Kumar Singh, Supdt (AR),

for Appellants
for Respondent

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 07/03/2019
Date of Decision : 07/03/2019

FINAL ORDER NOS-70626-70633/2019

Per: Archana Wadhwa

All the appeals are being disposed of by a common order as they arise out of the same impugned Order-in-Original No. 07/Cus/Commr./Noida/2015 dated

13/08/2015 passed by Commissioner of Customs, Noida, vide which he has confirmed duty of Customs to the extent of Rs.60,97,885/- against M/s Bharat Udyog along with imposition of penalty of identical amount in terms of Section 114A of the Customs Act. In addition, penalty of Rs.1 lakh stands imposed upon the said appellant in terms of Section 114AA of the Act. Further, the Commissioner has imposed penalties of varying amounts on the other appellants, in terms of Section 112(a) as also under Section 114AA of the Customs Act. The said appellants are either the partners of M/s Bharat Udyog or of the M/s Grape Marketing Pvt. Ltd., seller of imported goods on high sea sale basis or the director of the said M/s Grape Marketing Pvt. Ltd.

2. After hearing both the sides duly represented by learned Advocate Shri S. Sunil appearing for the appellant and learned A.R. Shri Pawan Kumar Singh appearing for the revenue, we note that M/s Bharat Udyog is having a factory in J & K area, engaged in the manufacture of Lead Alloys. They procured advance license for duty free import of the raw materials i.e. Remelted Lead Ingots. The said advance license was under the advance authorization scheme. The said Advance Licenses were procured for import of the goods at various places and present dispute

relates to import at ICD, Loni. The said procurement was in terms of an agreement with M/s Grape Marketing Pvt. Ltd., who sold the Remelted Lead Ingots on high sea sale basis. Thereafter, the appellant filed the Bills of Entries for the clearance of goods.

After clearance of the goods from the customs, the same were unloaded by M/s M.V. Logistics at Delhi in a godown and were transported by engaging a transporter M/s Kathua Srinagar Transport Company to Kathua, J & K the said transportation was under the cover of GRs issued by the said transport company. In Kathua the goods were used in the manufacture of final products which was meant to export.

3. As per the appellant out of total 323.58 MT of Remelted Lead Ingots, they could manufacture and export only 103.760 MT of lead alloys. As the goods were imported duty free with a condition of export of the final manufactured products, in terms of Notification No.96/2009-Cus dated 11.09.2009, they were duty bound to pay customs duty in respect of the balance quantity of Remelted Lead Ingots, which could not be utilized by them for the export purposes. Accordingly, they paid duty to the tune of around Rs.40 lakhs in respect of the balance

quantity which could not be utilized by them, along with interest etc.

4. Subsequently, investigations were initiated against the appellants and as a result, revenue entertained a view that the entire consignment of imported Remelted Lead Ingots was diverted in the local market and the same was never transported to Kathua in the appellants factory. As such the revenue alleged that inasmuch as the entire quantity imported by the appellant has not been utilized by them for the export purposes, they are under the legal obligation to pay the forgone customs duty to the extent of around Rs.60,97,885/-. Accordingly, proceedings were initiated against them which stands culminated into the impugned order passed by the Commissioner, confirming the demand along with interest against M/s Bharat Udyog as also imposing penalties upon them as well as on the other appellants.

5. Learned Advocate appearing for the appellant submits that for arriving at the above finding Original Adjudicating Authority has only relied on the statement of one Shri Ved Nath Tripathi of M/s Grape Marketing Pvt. Ltd., who had in a general manner deposed that the goods after clearance were brought to the godown of M/s Grape Marketing Pvt. Ltd. and from there, the same were diverted in the local

market. He submits that there is no reference in the said statement to any Bill of Entry filed by the assessee. He also clarifies that after movement of the goods to Delhi godown, the same were further transported to Kathua through Kathua Srinagar Transport Company, who had issued the proper GRs for the same. He submits that the revenue has not made any enquiry from the said transport company and the Original Adjudicating Authority has simpliciter concluded that the GRs issued by the said transporter were fake. There is virtually no evidence to arrive at the above conclusion, in the absence of any investigation at the end of the transport company. He further submits that the freight for such transportation was paid by the appellant through account payee cheques and goods were transported in 34 trucks. The same passed through toll post at Lakhanpur and toll receipts were issued by the state tax authorities, which were placed before the adjudicating authority, who has not even referred to the same. Further, on reaching the factory premises at Kathua the department was informed, goods were duly accounted for in RG-1 register and the goods manufactured by them were shown in the ER-1 monthly returns. Further, the appellant had admittedly exported the goods to the extent of 103.76 MT of lead alloys manufactured by them and this fact is not being disputed by the revenue. As such he

submits that in the absence of any allegations to the factum of export of goods, the demand of duty on the entire quantity of lead ingots imported by them is unsustainable. He fairly agrees that there were required to pay duty on the quantum of imported goods, which were not utilized by them and the appellant has accordingly discharged the duty liability along with interest in respect of the said quantum. He, accordingly, prays for setting aside the impugned order.

6. Learned A.R. Shri P.K. Singh appearing for revenue draws our attention to the reasoning of the adjudicating authority and submits that the factum of entering into an agreement by the appellant with M/s Grape Marketing Pvt. Ltd., who had sold the goods on high sea sale basis, itself was of doubtful nature, inasmuch as, the date of agreement and the date of procurement of stamp papers are different. He also submits that the goods after clearance by the appellant were again brought to godown of M/s Grape Marketing Pvt. Ltd. and was diverted locally from there.

7. After considering the submissions by both the sides and after going through the impugned order, we note that the revenue's allegations and findings are to the effect that entire imported lead ingots, which were meant for utilization in the manufacture of lead alloys at the

appellants factory located at Kathua, stand diverted by them in the local market. Such findings are primarily based upon the statement of one Shri Ved Nath Tripathi of M/s Grape Marketing Pvt. Ltd. Even that statement is not specific but a general statement of clearance of the lead alloys ingots from the godown of M/s Grape Marketing Pvt. Ltd. The said deponent was neither examined by the adjudicating authority nor by the appellant during the course of adjudication and as such the reliance on the said sole statement of Shri Ved Nath Tripathi is neither justified nor warranted.

8. Apart from the above, revenue has not been able to bring on record any other evidence to establish its case. On the contrary, we note that the goods were transported from ICD, Loni to New Delhi and from New Delhi to Kathua under the cover of proper documents issued by the transporters. Revenue has not bothered to investigate the transporters and record the statements of their representative so as to establish beyond doubt that the GRs issued by them were not proper and were fake. Apart from that we also note that the appellant had produced on record the toll receipts issued by to toll check post located at Lakhnepura, thus indicating and establishing beyond doubt that the goods passed through the said check post.

The Original Adjudicating Authority has neither referred to nor discussed the said plea of the assessee.

We further note that the revenue is not disputing the fact that the appellant had exported 103.76 MT of lead alloys. Admittedly, the lead alloys can be manufactured by using the raw material. If the said imported lead ingots have not reached the appellant's factory at Kathua as alleged by revenue, we fail to understand as to how the appellant could have manufactured and exported the said quantity of lead alloys. Admittedly, lead alloys cannot be manufactured from Vacuum and the revenue has not even alleged that they have procured the lead ingots from the other source. In the absence of any evidence to show alternate source of procurement of lead ingots and in the absence of any dispute of export of the final product lead alloys, the revenues case is on weak legs and cannot be sustained.

Not only the alternate source of procurement of lead ingots has not been shown by the revenue but the revenue is also silent on the alleged diversion of the lead ingots in the open market, inasmuch as, neither the names of the buyers nor the transporters stands disclosed by them. Further, there is no evidence of receipt of consideration by the appellant from the so called local buyers of lead ingots.

In the absence of all these evidences, we are of the view that the impugned order confirming the demand of duty against the assessee and imposing penalties upon various appellants is unsustainable.

9. Inasmuch as, the appellant has accepted their liability in respect of that quantum of imported lead ingots which could not been utilized by them for export of the goods and had already discharged duty liability to the tune of Rs.40 lakhs approximately, we are of the view that the balance confirmation of demand would not sustain. Accordingly, the impugned order is set aside except to the extent of admitted liability by M/s Bharat Udyog and the appeals are allowed by setting aside the penalties imposed upon all the appellants.

10. All the appeals are disposed of in above terms.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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