IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

C/550/2010-CU[DB], C/551/2010-CU[DB]

(Arising out of Order-in-Original No.03/Commr./LKO/2010 dated 20.05.2010 passed by Commissioner of Customs, Lucknow.)

M/s. Neelam Steels,
Shri Anil Handa, Proprietor

…APPELLANT(S)

VERSUS

Commissioner of Customs, Lucknow

RESPONDENT (S)

APPEARANCE

Shri A.P.Mathur, (Advocate) for the Appellant (s)
Shri Mohd. Altaf, (Asstt.Commr.)(A.R.) for the Revenue

CORAM:

SHRI ANIL CHOUDHARY, HON'BLE(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, MEMBER(TECHNICAL)

DATE OF HEARING/DATE OF DECISION : 03.04.2018

FINAL ORDER NO. 70844-70845/2018

Per ANIL G. SHAKKARWAR :

Above stated two appeals are arising out of common impugned Order-in-Original No.03/Commr./LKO/2010 dated 20.05.2010 passed by Commissioner of Customs, Lucknow. Therefore, they are taken together for decision.

2. Brief facts of the case are that the appellant were engaged in manufacture of polyester knitted fabrics/knitted readymade garments having manufacturing unit at Ludhiana. The appellant received order for export of boys work trousers to Nepal from Al Batin, Dubai through their authorized representative Shri Bhushan Ghai. The appellants were issued with a show

cause notice dated 24.10.2008 wherein there were allegations that the appellant did not export 1.00 Lakh pieces of readymade garments having FOB value of Rs.91,81,848/- since the appellant could not produce the documents as required by Notification No.45/2001-CE(NT) dated 26.06.2001 and therefore there was no proof of export of said garments. There was allegation that because of the failure of the appellant to produce proof of export the appellant violated conditions of Notification No.43/2002-CUS dated 19.04.2002 and 47/2002-CUS dated 22.04.2002 and section 11 of Foreign Trade (Development and Regulation) Act, 1992 and therefore the said 1.00 lakh pieces of readymade garments were liable for confiscation under section 113(d) and 113(i) of Customs Act, 1962 and the other appellant Shri Anil Handa, Proprietor was liable for imposition of penalty under section 114 of the Customs Act, 1962. The proceedings culminated into the passing of impugned Order-in-Original wherein the ld.Commissioner has held that manager of M/s.New Banga Transport Company Mr.Sekhar Malhotra in his statement dated 28.08.2008 recorded under section 118 of Customs Act, 1962 that no truck for transportation of goods vide LR No. 9303, 10202, 10203 had ever been provided by them to the firm of the appellant and the ld.Commissioner has concluded that that alone was sufficient to prove that the goods had not been exported. In view of his said findings he ordered for confiscation of 1.00 lakh pieces of readymade garments having FOB value of Rs.91,81,848/- under section 113(d) and (i) of Customs Act, 1962. He further imposed penalty of Rs.5.00 Lakhs on Shri Anil Handa under section 114 of the Customs Act, 1962. Aggrieved by the said orders both appellants are before this Tribunal.

3. Ld.Counsel for the appellants has submitted that the manufacturing unit in respect of the subject goods was within the jurisdiction of Commissioner of Central Excise, Ludhiana. Parallel proceedings were initiated by Commissioner of Central Excise, Ludhiana against the present appellant contending that the

subject goods were not exported and therefore the Central Excise duty on the same was recoverable and also that since the goods were not exported, Cenvat credit availed by the appellant was also recoverable. The said proceedings culminated into passing of Final Order No.53404-53405/2015-EX(SM) dated 26.10.2015 passed by Single Member Bench of this Tribunal wherein it was held as under. The findings in para 7 and subsequent para are reproduced below :-

> *"7. In this case, I find that the appellant has manufactured the goods, issued invoices to export the said goods to Nepal and thereafter shipping bills were filed and goods were presented before the Land custom station in India and the said goods were allowed to be exported to Nepal. Thereafter, appellant has received the payment. BRCs to that effect have also been produced by the appellant. These facts are not in dispute. The only dispute by the Revenue is that the appellant has not fulfilled condition 2(IV) of the Notification cited here in above. I find that as per the condition IV of the said notification the goods were required to be presented before Nepalese custom office and who has to endorse the certificate of the goods received in Nepal and is required directly sent to the officer of the Custom in charge and it is the duty of the custom in charge to send the duplicate copy of invoice to central excise officer to comply the said condition, appellant have no role to play. It is the departmental internal correspondence to ascertain the fact that export is complete or not. For the lapses of the department, appellant cannot be held faulted. Therefore, duty cannot be demanded from the appellant.*
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> *6. With these observations, I find that appellant has been able to prove his case of export of the goods to Nepal. Therefore, no duty can be demanded from the appellant and Cenvat Credit cannot be denied. As duty cannot be demanded from the appellant penalties on both the appellants is not impossible. With these terms, impugned order is set aside. Appeals are allowed with consequential relief if any."*

4. Further he has submitted that in view of the fact established that the subject goods have been exported, the allegations in the said show cause notice dated 24.10.2008 do not sustain.

5. Heard the ld.AR, who has agreed that the said Final Order dated 26.10.2015 was in respect of the same goods.

6. Having considered submissions from both sides, we find that Single Member Bench of this Tribunal has held that the goods in question were exported. Therefore, the impugned Order-in-Original is not sustainable. We therefore set aside the impugned Order-in-Original and allow both the appeals. The appellants shall be entitled for consequential relief, as per law.

(Dictated and pronounced in the court.)

SD/
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

SD/
(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

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