

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL**

REGIONAL BENCH : ALLAHABAD

COURT No. I

MISC APPLICATION No.C/MISC/70385/2018

In APPEAL No.C/71180/2018-CU[SM]

(Arising out of Order-in-Original No.19/Commr./NOIDA-CUS/2018 dated 21/08/2018 passed by Commissioner, Customs, Noida)

M/s Kenda Farben India Pvt. Ltd.

Appellant

Vs.

Commissioner, Customs, Noida

Respondent

Appearance:

Shri R. Krishnan (Adv.)

for Appellant

Shri Pawan Kumar Singh, Superintendent (AR),

for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Date of Hearing : 22/10/2018

Date of Decision : 25/10/2018

FINAL ORDER NO. **72475 / 2018**

Per: Archana Wadhwa

As per facts on record, the appellant imported 41 items valued at Rs.53.82 lakhs approximately and filed self assessed bill of entry on which Customs Duty cumulatively amounting to Rs.20,76,365/- was payable. Inasmuch one of the items imported by the appellant was 'PRODOTTO NW 775058 (Special Boiling Point Sprit for footwear industry)', Revenue entertained a view that the said item was restricted for import and cannot be permitted to be cleared. The fact of the item being

restricted item in terms of para 2.20 of the Foreign Trade Policy (FTP) 2015-20, was brought to the notice of the importers, in response to which they clarified that they were not aware of the said import of the goods being restricted and they have imported the same inadvertently and mistakenly. They accordingly made a request for allowing them to re-export the items.

2. In the above background, proceedings were initiated against them which stand adjudicated by the Commissioner vide his impugned order allowing the re-export of the goods subject to payment of redemption fine of Rs.65,000. In addition he also imposed penalty of Rs.65,000 in terms of Section 112 (a)(i) of the Customs Act, 1962.

3. Learned advocate appearing before me has submitted that the value of the said spirit is only to the extent of Rs.40,111.14 and the same was imported by them for use in the manufacture of their own product i.e. various chemicals, polishes etc. meant for using in footwear manufacturing industry. The same has got nothing to do with the trading and the assessee having declared the goods in a correct manner along with correct classification of the same cannot be held guilty of any *mala-fide* so as to impose any penalty upon them.

Referring to the provisions of para 2.20 of Foreign Trade Policy 2015-20, it stands submitted that sub-para c of the said para allows import of the goods in question, subject to grant of authorization. As such he submits that the only lapse on their part is non-obtaining the authorization for the import of the goods in question and as such the Adjudicating Authority should have allowed clearance of the said goods subject to payment of duty and a nominal redemption fine. In any case the Adjudicating Authority having allowed re-export of the goods, the imposition of redemption fine is neither justified nor warranted. For the above proposition reliance was placed upon precedent decisions of the Tribunal.

4. Contesting the said argument of the learned advocate, learned A.R. for the Revenue draws my attention to the findings of the Adjudicating Authority wherein reference stands made to para 2.20 of the Foreign Trade Policy which allows import of said goods only through State Trading Enterprises. As such he submits that the appellant was not allowed to import the items in question.

5. After carefully considering the submissions made by both the sides, I find that para 2.20 of the Foreign Trade

Policy allows import of the goods only through State Trading Enterprises. Sub-para c of the same is to the effect that –“DGFT may, however, grant an authorization to any other person to import or export any of the goods notified for exclusive trading through STEs”. As such it is clarified that even the grant of authorization is for import of the goods for exclusive trading through STEs and is not to be given to any other independent importer. As such, I agree with the Adjudicating Authority that import of this Special Boiling Point Spirit was not permissible in terms of the said para 2.20 and is un-authorized.

6. It is, further, seen that the appellant had made a request for re-export of the same before the Adjudicating Authority, which request stands accepted by the Adjudicating Authority. However, he has imposed redemption fine of Rs.60,000. Apart from the fact that such fine is much more than the value of the goods and without assessing the margin of profit, I find that it a settled law that where the goods are allowed to be re-exported, the redemption fine cannot be imposed. This stands so held in the case of SDS Ramcides Crop Science Pvt. Ltd. V/s Commissioner of Customs, Chennai-II reported at 2018 (359) E.L.T. 239 (Tri.-Chennai), also in Central Marketing Agency V/s Commissioner of Customs

(Airport), Calcutta reported at 2004 (178) E.L.T. 601 (Tri.-Kolkata), in ABP Pvt. Ltd. V/s Commissioner of Customs (Port), Kolkata reported as 2003 (151) E.L.T. 705 (Tri.-Kolkata) & also in HCL Hewlett Packard Ltd. V/s Collector of Customs, Delhi reported at 1997 (92) E.L.T. 367 (Tribunal). As such I find that there was no justification for imposition of redemption fine.

7. As regards penalty, I find that the importer while filing the bill of entry had given the correct description of goods along with the correct Tariff Item. The goods stand imported for their own actual use for the manufacture of their final product and the value of the goods is only to the extent of around Rs.40,000/-. The appellants have categorically submitted that they were not aware of such restriction and as such there was no *mala-fide* on their part neither was there any suppression or misstatement, in which case imposition of penalty upon them is not justifiable.

I agree with the above contentions of the appellant. It is not the Revenue's case that the appellant had tried to import the restricted items by mis-declaring their description or there was any *mala-fide* on their part. The value of the goods is only to the extent of 40,000 and the same were imported by the appellant for use in the

manufacture of their final product and not for the trading purpose so as to earn profit. In such a scenario, I am of the view that imposition of penalty upon them is not justified. Accordingly, the same is set aside.

8. In view of the forgoing, I set aside the redemption fine and penalty and allow the re-export of the goods. Appeal is disposed of in above manner. Early hearing also disposed of.

(Pronounced in Court on 25/10/2018)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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