CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
1st Floor, WTC Building, FKCCI Complex, K. G. Road,
BANGLORE-560009

COURT - I

Appeal(s) Involved:

Customs Appeal No.00622 of 2010

[Arising out of the Order-in-Original No. 29/2009-Commr. dated - 06/01/2010 passed by the Commissioner of Customs, Bangalore.]

M/s. Sutures India Pvt Ltd **....Applicants**
No.472-D, 13th Cross, IV Phase,
Peenya Industrial Area,
Bangalore – 560 058.

Vs.

The Commissioner of Customs **....Respondents**
Customs Commissionerate
C.R. Building,
Queens Road,
Bangalore – 560 001.

Appearance:

Mr. B. Venugopal, Advocate **....For Applicants**

Mr. K.A. Jathin, Dy. Com. (AR) **.... For Respondents**

CORAM:

Hon'ble DR. D. M. MISRA, MEMBER (JUDICIAL)
Hon'ble MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Date of Hearing : 02.06.2023
Date of Decision : 02.06.2023

FINAL ORDER No. 20573 /2023

Per R. BHAGYA DEVI:

Appellants are 100% Export Oriented Unit (EOU) under the jurisdiction of EOU Range-II of Customs Division, Bangalore. They are manufacturers of surgical sutures and surgical mesh. They have been issued with a license for private bonded warehouse and in-bond manufacturing vide Order No.146/2005 (Customs) dated

11.7.2005, which was valid up to 10.2.2010. Appellants imported as well as procured indigenously capital goods, raw materials, packing material and consumables free of duty vide Notification No.52/2003-Cus. and No.22/2003-C. Ex. both dated 31.03.2003. On preliminary investigation, it was found that 29 Daikin Air Conditioners, one FET continuous filament melt spinning system and 31 bin storage racks were not available within the bonded area. It was found that these were installed and used in a non-bonded area i.e., Domestic Tariff Area (DTA). Since the said goods were not used for intended purpose, they were seized and kept in safe custody. The value of the seized goods was Rs.1,35,51,459/- and the duty foregone was Rs.43,40,671/-. On the request of the appellant, the goods were provisionally released vide letter dated 23.09.2008 and 13.11.2008. After detailed verification of goods being diverted to DTA, a show-cause notice dated 21.05.2009 was issued to the appellant as the condition of the Notification No.52/2003-Cus. and No.22/2003-C. Ex. both dated 31.03.2003 were violated.

2. The Commissioner vide Order-in-Original No.29/2009-Commr. dated 6.1.2010 confirmed the violation of the conditions of the above Notifications and accordingly demanded duty amounting to Rs.30,30,182/- along with interest and also imposed penalty equivalent to duty. Since duty had been already paid by the appellant, the Commissioner had given the option to pay interest along with penalty of 25% of the duty within 30 days from the date of receipt of the order in terms of Proviso to Section 114A of the Act.

3. Appellant was represented by Shri B. Venugopal, learned advocate admitted the demand of customs duty in respect of the items cleared to DTA. He also stated that the duty has already been paid along with interest and the same has been recorded by the Commissioner himself in the impugned order. The appellant submits that the lapses were purely operational lapses due to inefficiency of store personnel and there was no intention to evade payment of duty. He also submits that there has been no suppression on their part and since the entire demand of duty has been made, the penalty imposed is not correct in law and needs to be set aside.

4. The learned Authorised Representative Mr. K. A. Jathin, reiterated the findings of the learned Commissioner and insists that the records prove that the conditions of the Notifications were violated by the appellant and the learned Commissioner has rightly confirmed the duty and imposed penalty as per law. Hence, the appeal needs to be rejected.

5. On perusal of the records, it is observed that during investigation by the officers of customs it was noticed that 29 Daikin Air Conditioners, one FET continuous filament melt spinning system and 31 bin storage racks valued at Rs.1,35,51,459/- were installed in the non-bonded area (DTA).

> **"Section 71. Goods not to be taken out of warehouse except as provided by this Act :** No warehoused goods shall be taken out of a warehouse except on clearance for home consumption or [1] [export], or for removal to another warehouse, or as

otherwise provided by this Act. **Section 72. Goods improperly removed from warehouse, etc. –**

(1) In any of the following cases, that is to say, -
(a) where any warehoused goods are removed from a warehouse in contravention of section 71;
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the proper officer may demand, and the owner of such goods shall forthwith pay, the full amount of duty chargeable on account of such goods together with [5][interest, fine and penalties] payable in respect of such goods."

There is no dispute that the conditions of the notifications referred supra were violated and the appellant had contravened the provisions of section 71 of the Customs Act 1962. Accordingly, the entire duty demanded was paid and the appropriation of the duty payment has been confirmed by the learned Commissioner vide paragraph (iv) and (v) in the findings portion of his Order. The commissioner has demanded interest on the duty demanded and imposed penalty equivalent to the duty demanded in terms of proviso to Section 114A of the Customs Act 1962.

"Section 114A. Penalty for short-levy or non-levy of duty in certain cases. –

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under [sub-section (8) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:

Provided that where such duty or interest, as the case may be, as determined under [3] [sub-section (8) of Section 28, and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:"

5.1 The fact that the goods were diverted to DTA from their bonded warehouse is not disputed and this fact has come to the notice of the department only after investigation, is also not contested. The only plea made by the appellants is that it was done on account of their inefficiency of the staff and there was no intention to evade duty. Based on the investigations the Commissioner has rightly held the appellant had wilfully suppressed and mis-declared the fact that the goods were used within the bonded warehouse. Therefore, the appellants were liable for penalty under Section 114A.

5.2 The Commissioner has given an option to pay interest along with 25% of duty within 30 days from the date of receipt of his order in terms of Proviso to Section 114A of the Act. Appellant has now presented a copy of the payment of duty along with interest and 25% of penalty on the demand confirmed by the learned Commissioner. Hence, nothing survives in the order.

6. Based on the above discussions and the payments made, the appeal is rejected.

(Operative portion of the order was dictated in open court)

(D. M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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