CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

C/743/2008-DB

[Arising out of Order –in-Original No. 20-2008 CUS. ADJN. dated 21/10/2008 passed by Commissioner of Customs, Commissionerate, Bangalore]

BHAGAWAN MAHAVEER JAIN COLLAGE
NO.91/2, DR.A.N.KRISHNA ROAD
VISHWESHWARAPURAM BANGALORE

Appellant(s)

Versus

C.C-BANGALORE-CUS
C.R. BUILDING,QUEENS ROAD,
P.B.NO. 5400,
BANGALORE
KARNATAKA
560001

Respondent(s)

Appearance:

Mr. PRADYUMNA G.H. ADVOCATE
NO.371, 8TH MAIN
SADASHIV NAGAR
banglaore
Karnataka
560080

For the Appellant

Mr. M.Saran, AR

For the Respondent

Date of Hearing: 08/06/2018
Date of Decision:09/07/2018

CORAM:
HON'BLE SHRI S.S GARG, JUDICIAL MEMBER
HON’BLE SHRI P.ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20925/2018

Per : P.ANJANI KUMAR

The appellants have imported 200 Nos of computers vide Bill of Entry No. 486404 dated 05.08.2003 by availing the benefit of concessional rate of duty in terms of Notification No. 51/96-Customs dated 23.07.1996. The Department on the basis of an objection raised by the Accountant General of India, issued a SCN dated 08.01.2007 demanding a differential duty of Rs.21,32,056/- alleging that the computers were being used by students and faculty members for preparing articles/projects which did not appear to be research work; the appellants were offering Post Graduate Level courses in microbiology, botany, biochemistry and that the students were not involved in research and research was not one of the objectives of the courses offered. The said SCN was confirmed by Commissioner of Customs vide Order-in-Original No. 21/2008-Customs adjudication dated 21.10.2008. Hence, this appeal.

2. The appellants contended that there is no dispute about the fact that the appellants had imported the subject goods claiming exemption under Notification No. 51/96-Customs on the basis of an Essentiality Certificate issued on 27.01.2003 by the Registrar, Bangalore University. The said certificate was issued by the university after satisfying that the appellants' institution was engaged in research in the fields of biotechnology, biochemistry, etc. It was neither alleged that the said certificate was obtained in a fraudulent manner nor the same was withdrawn at any stage. They rely on the decision of CESTAT in ***Proview Electronics Ltd vs. Commissioner of Central***

Excise- 2017 (354) ELT 408 (Tri-Chennai) wherein it was held that when the goods had been cleared on the basis of compliance of the prescribed conditions subsequent withdrawal of the facility of withdrawing such certificates would not justify the demand in the absence of any allegation of fraud or collusion.

3. In the instant case also, the certificate was never withdrawn by the Bangalore University. In the instant case, the Commissioner has simply relied upon the letter dated07.04.2006 written by Bangalore University addressed to the A.G., Audit clarifying that the courses offered by the appellants in microbiology or biochemistry did not come under the purview of the agricultural sciences. It is submitted that the clarification has no bearing on the import as the Essentiality Certificate has not been withdrawn. Reliance is placed on the following cases:

(i) Mahatma Gandhi Institute of Technology vs. Commissioner of Customs, Hyderabad- 2005 (186) ELT 52 (Tri. Bang)

(ii) Indo Cosmesi (P) Ltd Vs. Commissioner of Cus. New Delhi [2001 (133) ELT 613 (Tri. Del)]

(iii) Maruthi Detective & Security Agency Vs. Commr. Of C.EX, Belgaum [2006 (3) STR 521 (Tri.Bang)].

4. The appellants contended that as the goods were imported against invalid certificate, confiscation of the goods and imposition of penalty is not justified. In view of the decision of

CESTAT in the case of ***Viswanandha Institute of Tech. of Managemen***t ***Vs. Commr. Of Cus, ICD, New Delhi [2008 (231) ELT 65 (Tri. Del)]***

5. The Departmental Representative has reiterated the findings of the Commissioner and has highlighted that whereas the strength of the students in the courses is only 75 were pre-requisite for availing the benefit of the Notification. In the instant case as the research was not in the curriculum of the college, the imports are illegal. As per the Department of Scientific and Industrial Research in the field of agriculture, computers etc. are only eligible for said certificate whereas the courses offered by the college are different. Therefore, the demand and the confirmation thereof are justified.

6. Heard both sides and perused the records of the case.

7. We find that the impugned goods were imported and exemption was allowed on the basis of an Essentiality Certificate issued by the Registrar of Bangalore University. It is seen that vide Circular No. 28/2004-Customs dated 06.04.2004 have put a condition that when Notification No. 51/96-Customs dated 23.07.1996 is availed by privately funded college or educational institution that is not a public funded research institution or

not the commercial research institution, the benefit of Notification can be considered on the basis of the Essentiality Certificate issued by the university to which the said college or educational institution is affiliated on 'case to case' basis provided that the said university fallen under the eligible criteria of importers under the said Notification.

8. In the instant case, the Essentiality Certificate has been issued and the importer is affiliated to Bangalore University and Bangalore University is registered with the DSIR. Therefore, the importer is eligible to import the said items under concessional rate as the conditions of the Notification have been satisfied. No fraud was alleged. In fact, it is seen that no investigation is made and no statements are recorded. The Essentiality Certificate was not withdrawn by the authority who has issued it. Under these circumstances, demand notice for an extended period only on strength of a letter written by the university to the A.G., Audit party is not sustainable. We find that CESTAT in the case of ***Proview Electronics Ltd vs. Commissioner of Central Excise*** cited supra has held that "we are of the view that the clearance of impugned goods was done properly on the basis of compliance of the prescribed conditions on the date of clearance and subsequent withdrawal of facility to issue Essentiality

Certificate does not justified the demand raised by the Department in the absence of any allegation of fraud or collusion". Moreover, in the instant case, the Essentiality Certificate issued was not withdrawn or negated or was proved to have been obtained by way of fraud, collusion etc., the imports made on the strength of the said certificate are liable to be held as legal and valid.

9. In view of the above, the appeal is allowed.

(Order was pronounced
in Open Court on **09/07/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

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