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

Appeal(s) Involved:

C/670/2007-DB, C/679/2007-DB, C/680/2007-DB, C/681/2007-DB

[Arising out of Order-in-Appeal No. 95/2007 dated 27/07/2007 passed by the Commissioner of Customs, Bangalore]

Continental Exporters
No.7, Millers Tank Bed Area,
Bangalore

Sapna Garments
No.7, Millers Tank Bed Area,
Off: Queens Road, Bangalore

Impex International
No.102, S.N.Complex, 1st Floor,
Vanivilas Road, Shankarapuram,
Bangalore

Kantilal Jain
C/o. M/s. Maxim India, No.10,
Ashwathkatte Road, V.V. Puram,
Bangalore

Appellant(s)

Versus

C.C-Bangalore
C.R. Building, Queens Road,
P.B. No. 5400,
Bangalore – 560 001
Karnataka

Respondent(s)

Appearance:

Mr. Krishna Srinivasan, Counsel
6/1, Bishop Wallers
Avenue West, Mylapore
Chennai – 600 004

For the Appellant

Mrs. Kavitha Poduwal, Superintendent

For the Respondent

(AR)

Date of Hearing: 02/08/2018
Date of Decision: 07/08/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order Nos. 21112 – 21115/2018

Per: P. ANJANI KUMAR

The appellants M/s. Continental Exporters and M/s. Sapna Garments imported 10,800 boxes declared as plastic boxes claiming the benefit of Notification 21/2002-Cus dated 01.03.2002. The Department has conducted some investigation and issued a show-cause notice to the appellants seeking to deny the benefit of the Notification and demanding the duty forgone on the ground that the appellants have not fulfilled the conditions of the Notification and goods imported by them are not covered under the Notification. The show-cause notice was confirmed by the Additional Commissioner of Customs confirming the following.

(i). M/s. Sapna Garments and M/s. Continental Exporters are ineligible for the benefit of exemption notification under 21/2002-Cus dated 01.03.2002 and the goods imported are liable for confiscation.

(ii). M/s Sapna Garments are liable to pay duty of Rs. 3,01,873/- in respect of goods covered vide Bills of Entry 1821/18.02.2005, 1900/21.2.2005 and 2532/17.03.2005 along with interest.

(iii). M/s Sapna Garments are to pay a fine of Rs. 7,50,000/- (Rupees Seven Lakhs Fifty Thousand only), in lieu of confiscation and a pay a penalty of Rs. 1, 50,000/- (Rupees One Lakh Fifty Thousand only).

(iv). Goods valued at Rs.15,43,568/- imported by M/s Continental Exporters (as shown in Work Sheet 2 to SCN)are liable for confiscation.

(v). M/s Continental Exporters are liable to pay Duty of Rs. 16,93,841/- (Rupees Sixteen Ninety Three Thousand Eight Hundred and Forty One only) along with interest on the goods imported by them (as shown in Work Sheet 2 to SCN).

(vi). M/s Continental Exporters are liable to pay a Fine of Rs. 30,00,000/- (Rupees Thirty Lakhs only), in lieu of confiscation, and a penalty of Rs. 6,00,000 (Rupees Six Lakhs only).

(vii). M/s Impex International to pay a penalty of Rs. 8,00,000/- and Shri Kanthilal Jain, partner of Sapna Garments to pay a penalty of Rs. 5,00,000/- (Rupees Five Lakhs only)..

(viii). Rs. 8,00,000/- (Rupees Eight Lakhs only) paid by M/s. Impex International is liable for appropriation.

The Commissioner of Appeals has confirmed the order passed by Additional Commissioner. Hence, the appeals.

2. With this background, we heard Shri Krishna Srinivasan, learned advocate for the appellants and Smt. Kavitha Poduwal, DR appearing for Revenue.

3. The main submissions on behalf of the appellant are summarized below:

3.1. Sl. No. 140 of Notification No. 21/2002 grants the benefit of exemption for bonafide exporters. There is no condition of end-use attached to such exemption. They have relied upon the following case-law:

a) Dunlop India Ltd. Vs. Union of India – (1976) 2 SCC 241

3.2. Continental was a bona fide exporter as evidenced by their registration with the Apparel Export Promotion Counsel.

3.3. M/s Sapna was also a bona fide exporter even after they have not done any export for over three years prior to import. M/s Sapna was registered with AEPC which proved that it was a bona fide exporter.

3.4. Both Sapna and Continental were regularly importing the items plastic tags availing the benefit of the exemption. Such consignments were cleared without any objection by Customs. On account of such past established practice, Customs Authorities cannot revoke the benefit certainly. The learned counsel produced samples of the plastic tags said to be from the importer consignments and argued that the imported goods are nothing but plastic tags even though same can be described as tag pins.

He also relied on following case-laws to support his arguments.

a) Hira Lal Hari Lal Bhagwati Vs. CBI – (2003) 5 SCC 257

b) Gujarat State Export Corporation Ltd. and another Vs. Union of India and another – 1984 (17) E.L.T. 50 (Bom.)

c) New India Rubber Works (P) Ltd. Vs. Collector of Customs – 1994 (72) E.L.T. 840 (Cal.)

d) Vinod Gupta Vs. Collector of Customs – 1988 (37) E.L.T. 44 (Cal.)

3.5. Learned counsel submitted that the Common Parlance Test and Commercial Understanding is more important than Technical meaning/definitions. He relied upon the following case-laws:

a) Shree Baidyanath Ayurved Bhavan Ltd. Vs. CCE – 1996 (83) E.L.T. (492) (S.C)

b) Indian Cable Co. Ltd. Vs. CCE – 1994 (74) E.L.T. 22 (SC)

c) Union of India Vs. Garware Nylons Ltd. – (1996) 10 SCC 413

d) Asian Paints India Ltd. Vs. CCE (1988) 2 SCC 470

e) Union of India Vs. Tata Iron and Steel Co. Ltd. ECR C450 SC

f) Continental Exporters Vs. Assistant Collector of Customs – 1995 (77) E.L.T. 801

g) United Offset Process Pvt. Ltd. Vs. Asst. Collector of Customs Bombay and other – 1989 Supp (1) SCC 131

h) CCE Vs. Vicco Laboratories – (2005) 4 SCC 17

i) HCL Ltd. Vs. Commissioner of Customs – (2015) 10 SCC 532

j) CCE Vs. Hindustan Unilever Ltd. – (2015) 10 SCC 742

3.6. The appellant submits that they have not mis-declared the goods. They relied upon the following case-law:

a) Polyglass Acrylic Manufacturing Co. Ltd. Vs. CCE – (2003) 4 SCC 762

b) Northern Plastic Ltd. Vs. CCE – (1986) 6 SCC 443

5. The learned DR justified the impugned order. She fairly conceded that there is no end-use condition attached to the Sl.No. 140 of the Notification No. 21/2002 However, she stated that the benefit is to be extended only to bona fide exporters and that the benefit will not be available to tag pins.

5.1. The learned DR further submitted that in the absence of copies of bills of entry she is unable to accept that the samples produced by the advocate are from the original import consignments.

6. We heard both sides and perused the records. The brief issue to be decided in this case is as to

(i) Whether the imported product is covered under the Notification?

(ii) Whether the importers are qualified to be bonafide exporters?

6.1. Coming to the issue at No. (i), we find that the Notification No. 21/2002 exempts certain goods subject to following such condition mentioned therein. We find that the appellants have claimed the exemption as per entry at Sl. No. 140 of the Notification. The Sl. No. reads as follows:

S. No.	Chapter/Heading/sub-Heading No.	Description of Goods	Standard rate	Additional Duty Rate	Condition No.
140	39, 48 or any other chapter	Tags, labels, printed bags, stickers, belts, buttons or hangers, imported by bonafide exporters	Nil	Nil	--

The goods were imported by M/s. Sapna Garments and M/s. Continental Exporters claiming the benefit of Sl. No. 140 of Notification No. 21/2002. The benefit is available to tags, labels, printed bags, stickers etc. imported by bona fide exporters. After a perusal of the relevant entry of the Notification, it is evident that there is no end use condition specified in column 6 of the table attached to the Notification. It is settled position of law that the Notification is to be interpreted directly as per the words appearing therein.

6.2. We find that what is permitted to be imported duty free under this heading are only tags. It has been contended by the appellants that they have imported 'tags' whereas the Department contested that what they have imported are 'tag pins' which are not covered by the Notification. The Department has also contended that the literature on the boxes does not mention the products to be 'tags'. The material collected during the investigation indicate the same to be tag pins or loops or wires etc. The website of the importers do not indicate any of the piece in tags. For a final appreciation of the fact as to whether a tag and tag pins are one and the same or there is a difference between them. We have gone through the definition of 'tag' as available. We have gone through the definitions of 'Tag" as is found in various sources on Internet. We find that the word 'tag' is defined as follows:

'Tag' (noun) is a label attached to someone or something for the purpose of identification or to give other information.

(Oxford Dictionary)

A small piece of paper, cloth or metal, on which there is information tied or stuck on to something larger.

(Cambridge Dictionary)

Tag is a small piece of card or cloth which is attached to an object or person and has information about the object or person on it.

(Collins Dictionary)

On the other hand Wikipedia defines the 'tag pins' *to be* ***a method a means of a economical elegant and easy way of attaching a tag t a government toys, articles, shoes, carpets, purses etc. either by the help of tag gun or just by hand.***

From the above, We understand that a 'tag' is a label or a card giving the particulars of the product, person, price etc. whereas a 'tag pin' is a link or a printed or a support with which the tag is attached or hanged to the object under sale or display. What has been produced before us during the hearing of the case appears to be 'tag pins' or 'Tag Loops' rather than 'Tag'. Therefore, it is to be concluded that what the importers had imported are 'tag pins' and or 'Tag Loops' are not 'tags'. It is also mentioned that the imported products contain any tag pin with the help of which the tags are attached to the apparel. Therefore, there is no confusion on our part to hold that the items imported by the appellants are not tags. At best they can be called 'tag pins' or 'tag loops'. It may be the function of the item is tagging. For this reason they do not become Tags. We find that the Notification does not permit the import of 'tag pins' or 'loops'. Any Notification giving the benefit of exemption is required to be construed strictly and the person invoking the exemption provision to relieve him of the tax imposed establish that he has exempted by the said Notification as held by the Hon'ble Supreme Court in the case of *M/s. Perfect Machine Tools Vs. CC – 1997 (96) E.L.T. (214) (SC)* as held by the original adjudicating authority. We find that Supreme Court in the case of *CC Mumbai Vs Dilip Kumar & Co. and others* held, in civil appeal No 3327/2007, that

'Exemption Notification should be interpreted strictly: the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption'

For that reason we have no doubt in holding that the appellants have proved satisfactorily the eligibility of the item imported for exemption. We hold that the appellants did not import 'tags'. Items imported by them 'tag loops or pins' are not eligible for exemption under Sl. No. 140 of the Notification 21/2002-Cus.

6.3. Coming to the second question of whether the importers/ the appellants qualified to be bona fide importers, so as to be eligible for the duty free imports as envisaged in the Notification. We find that the Order-in-Original and Order-in-Appeal find that the importers are not bona fide importers. They have imported goods and sold them to M/s. Impex International on high sea sales basis even without following the procedure. Though the appellants have claimed themselves to be bona fide exporters they did not produce the necessary credentials before the original or appellate authority. They have produced a certificate given by Apparel Export Promotion Council. The OIO and OIA held however, that they had no bona fide intention to use them in the manufacture of goods to be exported. They have imported goods only to sell the same to traders who are not bona fide exporters. Even though the goods were sold on high sea sales basis to M/s. Impex International, M/s. Sapna Garments and M/s. Continental Exporters have themselves filed the Bills of Entry. We find that the appellants have produced the certificates issued by AEPC. However, they have not given any details of exports made them in the past. The department too did not prove that they have not exported any goods albeit in the past.

Though it was mentioned in the OIO and OIA that the appellants have sold the goods on high sea sales basis, they have themselves filed the bills of entry. However, it is not forthcoming whether the fact of high sea sales was suppressed from the Department. It is also not understood as to why the Department allowed the high sea sales to both Bills of Entry. We find that Commissioner (Appeals) has held that Notification No. 21/2002 conveys the intention of the Government to exempt the goods if imported by a bona fide exporters engaged in exports for use by him in the manufacture of export goods and not the goods imported for trading purpose. We see that such condition has not been built in a Notification. The only condition that is built is that the exemption is available to the items if listed therein provided the importer satisfies the conditions therein. As long as the importers have been certified to be exporters by the AEPC they are to be considered as bona fide exporters only. We find that show-cause notice or the Order-in-Original or Order-in-Appeal have not examined the claim of the appellants that they are bona fide exporters in a proper perspective. No finding has been given as to whether the appellants have not exported at all even in the past contrary to their claims. However as we find that the goods in question are not eligible for exemption we do not intend to go further into the aspect whether the appellants were bona fide exporters or otherwise.

6.4. Further, the appellants have contended that their previous exports were permitted and therefore their import should be allowed as per the past practice. We find that it is a settled law that there is no estoppel in matters relate to taxes. Only due to the reason that such imports were permitted in previous years, the same cannot be continued once the Department has come to know about the wrong practice. We find that there is no infirmity in the orders to that extent.

6.5. We find that the Order-in-Original and Order-in-Appeal seeks to impose fine in lieu of confiscation in respect of goods which are cleared earlier. As the goods are not available for confiscation, we hold that such fine do not stand scrutiny of law. Therefore, we set aside the fine of Rs. 30,00,000/- (Rupees Thirty Lakhs only) imposed in lieu of confiscation on M/s. Continental Exporters under Section 126 of the Customs Act. In respect of the goods imported by Sapna Garments valued at Rs. 10,98,958/- fine of Rs. 7,50,000/- (Rupees Seven Lakhs Fifty Thousand only) in lieu of confiscation has been imposed. This certainly is on the higher side. It has been settled law now that fine, penalty etc. should be commensurate with the offence as well as the value of the goods. Therefore, we reduce that fine to Rs. 1, 00,000 (Rupees One lakh only).

6.6. However, looking into the facts and circumstances of the case, wherein, the department has cleared the consignments of the appellants in the past, the penalties appear to be the higher and hence need reduction. We find that penalty has been imposed on M/s. Impex International under Section 112(b) of the Customs Act 1962. Further we find that in the instant case they are only the purchasers of the goods imported. Nothing has been adduced to establish their role commensurate to the penalty imposed. Therefore, we find that imposition of such a huge penalty on them is not acceptable. Therefore, we reduce the penalty to Rs 1, 00,000/- (Rupees One lakh only).

6.7. Similarly, we are inclined to reduce the penalties imposed on M/s Sapna Garments from 1,50,000 to Rs 1,00,000/- (Rupees One lakh only); penalty imposed on M/s Continental Exports Rs. 6,00,000/- to Rs. 2,00,000/- (Rupees Two lakhs only) and the penalty imposed on Shri Kanthilal Jain, partner of Sapna Garments and CEO of M/s. Continental Exports from Rs. 5,00,000/- to Rs 3,00,000/- (Rupees Three lakhs only).

7. In view of the above, we reject the appeals as far as confirmation of duties is concerned and the appeals are partially allowed to the extent of fine and penalties as discussed above.

(Order Pronounced in Open Court on **07/08/2018**)

(P. ANJANI KUMAR)
TECHNICAL MEMBER

(S.S GARG)
JUDICIAL MEMBER

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