CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

COURT NO. I

Appeal No. C/55802/2014-DB

Date of Hearing/ Decision : 16.03.2018

[Arising out of Order-in-Appeal No. OIA-ASR-CUSTM-PVR-APP-179-14-15 dated 21.08.2014 passed by the Commissioner (Appeals) Central Excise & ST, Ludhiana]

M/s. Jindal Drugs Pvt. Limited : **Appellant**

vs.

Commissioner of Central Excise & ST, Ludhiana : **Respondent**

Appearance:

Shri Mihir, Advocate for the Appellant(s)
Shri Atul Handa, A.R. for the Respondent(s)

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Final Order No. 62198/2018

Per : Ashok Jindal

The appellant is in appeal against the impugned order demanding customs duty and imposing penalty and redemption fine on the appellant.

2. The facts of the case are that the appellant is engaged in manufacturing of excisable goods Coco Butter and their factory is situated in the state of Jammu & Kashmir. The appellant was issued advance authorisation dated 24.01.2007 by the Jt. Director, DGFT for duty free clearance of Cocoa Paste

imported total One lakh MTs and were required to export of Coco Butter against the same. Against the said advance authorisation, the appellant imported 100 MT of Cocoa Paste, vide two bills of entry duty free in terms of Notification No. 93/2004-Cus dated 10.09.2004. Due to an accident beyond the control of appellant, 50MT of Cocoa Paste imported against one bill of entry dated 26.4.2007, lost due to melting in transit and as a result of which some leaked cartons were unusable. The said quantity was reduced in the balance of imported Cocoa Paste stock record. The said loss of Cocoa Paste was explained by surveyor. During the course of audit of the appellant, the appellant intimated to the department that 50MT of Cocoa Paste imported has been damaged in transit and the quantity lost stands written off and reduced from the material import record. The appellant purchased lost quantity of Coco Butter from the open market and exported the same for fulfilment of export obligation. While exporting locally procured Coco Butter, no benefit of rebate or duty draw back was claimed by the appellant. The said advance license was redeemed in terms of Para 4.26 of the HBP and the redemption letter dated 24.06.2011 along with no bond certificate was issued to the appellant. Pursuant to that, appellant requested the Dy. Commissioner of Customs, Ludhiana to cancel the bond. The show cause notice was issued to the appellant to show cause as to why the bond No. 41 dated 23.4.2007 furnished by them, should not be enforced for violating condition 5 thereof and duty should not be demanded along with interest and the quantity of One lakh Kgs. of Cocoa Paste should not be confiscated and penalty is to be imposed, on the ground that 50MT of Cocoa Paste imported against bill of entry dated 26.4.2007 was lost. It was alleged in the show cause notice that 100MT of Coco Butter paste (50MT of each against the bill of entry dated 26.4.2007 and bill of entry dated 09.05.2007) were shown as lost without providing any basis for the same. As the imported goods were not used for manufacturing of the goods which are to be exported therefore, duty is sought to be demanded and by way of impugned order, the demand of duty was confirmed on the ground that imported goods were not used in the manufacture of goods exported. Therefore, the appellant is liable to pay duty on the imported goods along with interest and it was ordered for confiscation of the Cocoa Paste imported by the appellant and redemption fine of Rs. 75,00,000/- was imposed and penalty of Rs. 25,00,000/- was also imposed. On appeal, ld. Commissioner (Appeals) reduced the redemption fine to Rs 35,00,000/- but rest of the adjudication order was confirmed. Against the said order, the appellant is before us.

3. Ld. Counsel for the appellant submits that the licensing authority has redeemed the advance authorisation under which the impugned goods were imported. As the export obligation against the said advance authorisation has been fulfilled and also submitted that once the DGFT has not questioned the veracity of the transaction, the Customs authority cannot refuse the exemption, on the allegation that there was any misrepresentation. In any case, if there was any misrepresentation, it was the licensing authority which has to take steps to cancel the license. To support his contention, he relied on the decision in the case of *Titan Industries Limited vs. Addl. Commissioner of*

Customs, Chennai – 2003 (158) ELT 437 (Mad.), Titan Medical Systems Pvt. Limited vs. CC, New Delhi – 2003 (151) ELT 254 (SC), Autolite (India) Limited vs. UOI – 2003 (157) ELT 13 (Bom.) and FNS Agro Foods Limited vs. CC (Prev.), Delhi – 2016 (337) ELT 31. Ld. Counsel prays that appellant has not contravened the provisions of Para 4.1.3 of Foreign Trade Policy. It is his submissions that once the advance authorisation under which goods were imported stands redeemed and export obligation against the same is fulfilled, it is not open for the Customs authorities to confirm any demand in relation to the said advance authorisation. He further submitted that the appellant has not violated any condition of Notification No. 93/2004-Cus dated 10.09.2004. The appellant has not claimed any benefit i.e. rebate or draw back in respect of Coco Butter which was purchased locally and used to discharge export obligations. Therefore, demand against the appellant is not sustainable in the light of the decision of Hon'ble Apex Court in the case of *CC, New Delhi vs. C.T. Scan Research Centre (P) Limited – 2003 (155) ELT 3 (SC).*

4. On the other hand, ld. AR reiterated the findings of the impugned order and submits that, as the appellant themselves admitted that imported goods were not used in the manufacture of finished export goods and as per the condition of advance authorisation, the imported goods are to be used in the manufacture of export goods. Therefore, the duty has rightly demanded from the appellant and redemption fine and penalty were also rightly imposed on the appellant.

5. Heard the parties and considered the submissions. We find that in this case, the facts not in dispute are that appellant was having advance authorisation and imported Cocoa Paste against the advance authorisation. It is also a fact that 50MT of Coco Butter was lost during transit from the port to their factory and the same has been intimated to the department but the lost quantity has been replaced by the appellant by purchasing the Cocoa Paste from the local market to fulfil their export obligation and appellant has not claimed any rebate or draw back in respect of the locally procured Coco Butter. It is also a fact on record that advance authorisation has been discharged by DGFT (licensing authority) as export obligation has been fulfilled by the appellant. As the appellant has discharged the export obligation, in that circumstance, it is not open for the Revenue to initiate proceedings against the appellant that they have not fulfilled the condition of the advance authorisation. A similar view was taken by Hon'ble High Court of Bombay in the case of *Autolite (India) Limited (supra), as under*:

> "**7.** Having heard the Counsel on both the sides, we are of the opinion that the Customs authorities below were not justified in refusing to allow the duty free clearance of the goods on the ground that die steel imported by the petitioner is capital goods and capital goods did not fall within the scope of the Notification No. 116/1988. Admittedly, under the advance licence issued, the petitioner was entitled for duty free import of die steel as a material required in the manufacture of export product. Once the Licensing Authority has accepted that die steel is a material required in the manufacture of the export product, it is not open to the Customs Authorities to go behind the licence and deny duty free clearance of the goods. The exemption Notification No. 116/1988, dated 30th March, 1988 specifically states that the materials that are required to be imported for the purpose of manufacture of resultant products shall include such items as are imported into India against the advance licence for

subsequent exportation. In the instant case, the licence specifically states that the petitioner is entitled to import die steel as a material required for the manufacture of resultant products. The Apex Court in the case of *Titan Medical Systems Pvt. Ltd.* v. *Collector of Customs* reported in 2003 (151) E.L.T. 254 (S.C.) has held that once an advance licence is issued and not questioned by the licensing authority, the Customs authorities cannot refuse exemption on an allegations that there was any misrepresentation. In the present case also, the licensing authorities have not found fault with the statement of the petitioner that the die steel is a material required in the manufacture of resultant product and have granted advance licence to the petitioner. Assuming that the licensing authorities have wrongly accepted the statement of the petitioner, so long as the licence is valid and subsisting the import of materials set out in the advance licence are liable to be cleared duty free, under Notification No. 116 of 1988 and the Customs authorities cannot deny duty free clearance of the materials set out in the licence. It is open to the Customs authorities to sit in appeal and hold that the licensing authorities have erroneously endorsed advance licence to permit import of die steel as a material required in the manufacture of the resultant product. In this view of the matter, we are of the opinion that the impugned orders passed by the Customs authorities below cannot be sustained.**”**

We further take note of the fact that the Hon'ble High Court of Madras in the case of *Titan Industries Limited (supra)* observed as under:-

“8. From the aforesaid decisions, it becomes clear that once export obligation has been met, it is not for the customs authority to insist for the nexus in respect of matters coming under this special scheme. If any import is in contravention of the licence, it is for the licensing authorities to take action and not for the customs authorities. It is stated by the first respondent that the customs authorities have already made correspondence in the matter with the licensing authorities. Therefore, it is for the licensing authorities to take action, if it is so required under the law. But the customs authority cannot refuse to release the bank guarantee merely because the matter is under correspondence with the licensing authorities.

9. For the aforesaid reasons, the writ petition is allowed and a direction is issued to the first respondent to release the bank guarantee. This order will not stand in the way of the appropriate authorities taking any appropriate action in accordance with law. In result, the bank guarantee may be released within a period of 60 days from the date of receipt of a copy of this order. No costs.**”**

6. We further take note of the fact that the appellant has not violated any condition of the Notification No. 93/2004-Cus dated 10.09.2004. As per the condition of said notification, the appellant shall not transfer or sale the imported goods. Admittedly, in this case, appellant has neither transferred nor sold the imported goods but the said goods were lost in an accident in transit. In that circumstance, it cannot be held that appellant has violated the condition of Notification No. 93/2004-Cus dated 10.09.2004. Therefore, on that account also demand cannot be raised against the appellant.

7. In view of the above discussion, we hold that appellant has discharged their export obligation and to that effect, they have redeemed their bond executed with the licensing authorities i.e. DGFT. In that circumstance, Customs authorities cannot initiate proceedings against the appellant. Therefore, we do not find merits in the impugned order and the same is set-aside. In result, the appeal is allowed with consequential relief, if any.

(Order dictated and pronounced in the court)

Anil G. Shakkarwar
Member (Technical)

Ashok Jindal
Member (Judicial)

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