CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

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

COURT NO. I

Appeal No. C/559,633,634/2009 -DB

Date of Hearing/ Decision : 20.03.2018

[Arising out of Order-in-Appeal No. OIA-23-COMMISSIONER-CS-2009 dated 09.06.2009 passed by the Commissioner (Appeals) Central Excise & Customs, Rohtak]

M/s. Suretex India Limited : **Appellant**
Shri Ravinder Pal Singh
Shri Surender Pal Singh

vs.

Commissioner of Central Excise & Customs, Rohtak : **Respondent**

Appearance:

Shri Surjeet Bhadu & Shri Veer Singh, Advocates for the Appellant(s)
Shri Satyapal, 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. 62320-62322 / 2018

Per : Ashok Jindal

The appellants are in appeal against the impugned order demanding duty on the imported goods which were imported by the appellant under LoP issued by Development Commissioner without payment of duty and the same has never been used for manufacture. Therefore, depreciation on the said goods cannot be allowed and the appellant is required to pay duty.

2. The facts of the case are that appellant was 100% EOU for which LoP was issued by the Development Commissioner on 22.03.1994. Being an EOU, the appellant was governed by Chapter 6 of the Foreign Trade Policy and the authorities of Development Commissioner. The appellant imported certain capital goods duty free and also procured duty free inputs for its use. As the appellant was not able to do their business and could only export goods worth Rs. 63.80 Lakh, the Development Commissioner permitted de-bonding of the EOU vide its letter dated 29.11.2009 wherein they were required to pay duty on the goods in stock or to export the same. The appellant paid duty of Rs. 12,15,599/- on the depreciated value of the capital goods as inputs were already used in the manufactured goods exported and payment of the same was admitted by the Development Commissioner. The appellant communicated the payment of duty and calculation thereof on depreciated value to the Central Excise department vide letter dated 12.02.2003 and 28.02.2003, along with a letter of undertaking for de-bonding. Thereafter, the show cause notice was issued by the Commissioner of Customs to demand total duty saved, on the allegation that capital goods/ inputs imported were never put to use for manufacture therefore, depreciation cannot be allowed. It was also held that appellant has not given any intimation about the commencement of production or export of goods. Therefore, the impugned order was passed demanding duty of Rs. 2,50,95,388/- and also imposed various penalties on the appellant. Against the said order, the appellant is before us.

3. The ld. Counsel for the appellant submits that the factory of the appellant was visited by the Superintendent of Central Excise on 25.08.1999 for verification of self removal request of the appellant and it was found that appellant was manufacturing the goods and therefore, Revenue cannot take 'U' turn to say that appellant was not engaged in any activity of manufacture of the said imported goods. It was further submitted that as de-bonding was allowed by the Development Commissioner therefore, the Customs authorities have no authority to sit on the order of the Development Commissioner.

4. On the other hand ld. AR submits that it is fact on record that appellant has failed to fulfil their export obligation and imported goods without payment of duty. In that circumstance, the duty forgone is required to be recovered from the appellant.

5. Heard the parties, considered the submissions. The case of the Revenue against the appellant is that they have never started any manufacturing activity and being 100% EOU, imported capital goods as well as inputs without payment of duty, in terms of LoP issued to them on 22.03.1994.

We find that appellant has produced a letter issued by the Range Superintendent confirming that unit of the appellant was running on 24.01.2000. The same is extracted hereunder:-

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Office of the Superintendent Central Ex. Range-II
Panipat

C.No. CE-20/RWC/ Suitex/PNP/99/114   Dt. 24-1-2000

To
M/s Suitex India Ltd.
Village - Siwah
G.T Road Panipat 132104

Dear Sir,

__Subject:__ Renewal of 100% EOU licence : reg.

Please refer to your letter dtd.
29.12.99 & 11.11.99.

In this regard a registered
letter asking some informations was written
to you on 14.9.99 and its photocopy has been
provided to your excise dealing person again on 11.11.99.
As you are aware, your unit was visited on
25.8.99 and it was found running. No records
were maintained at the unit for warehousing
of goods or for despatch of finished material.
As far as Self Removal Scheme is concerned, it
appears that your unit does not fall in any
of the three categories required for this
scheme as per trade notice no. 19/99 of this
commissionerate. You have imported raw material
also. Now you are once again requested to
provide information in support of your self
removal request and to deposit cost recovery
charges till date..

Yours sincerely,

Superintendent C.Ex.
Range-II

Therefore the Revenue cannot claim that the appellants have never used the imported goods for discharging their export obligation. Admittedly, the appellant could not fulfil export obligation and therefore, they applied for de-bonding with the Development Commissioner and the same has been allowed to them. In that circumstance, the appellant was required to pay duty on capital goods at applicable rates at the time of payment of duty. The said issue has been settled by this Tribunal in the case of *Evergreen Synthetics Limited vs. CCE, Surat – 2002 (51) RLT 483 (Cegat Mumbai)* wherein it has been held that duty is to be demanded on the rates applicable at the time of de-bonding at depreciated value. Further, in the case of *CC & CCE, Vadodara vs. Solitaire Machine Tools Pvt. Limited – 2003 (152) ELT 384 (Tri. Mumbai) and Kharbros Steel India Limited vs. CCE, Jaipur – 2005 (71) RLT 635 (Cegat)* the Tribunal has taken the same view. In that circumstance, we hold that appellant has rightly paid duty on depreciated value of capital goods at applicable rates at the time of debonding.

We further hold that no penalties are imposable on the appellants as proceedings against the appellants has already been closed by the Development Commissioner and no specific provision has been provided for imposing penalties under Section 112 of the Customs Act.

6. In view of the above analysis, the impugned order is set-aside and the appeals are allowed with consequential relief.

(Order dictated and pronounced in the court)

Anil G. Shakkarwar
Member (Technical)

Ashok Jindal
Member (Judicial)

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