CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

SINGLE BENCH
COURT NO.1
Appeal No. E/60524/2018

[Arising out of the Order-in-Appeal No. LUD-EXCUS-001-APP-31-18 dated 15/01/2018 passed by the Commissioner (Appeals) Central Goods & Service Tax, Ludhiana]

Date of Hearing/Decision:05.10.2018

For Approval & signature:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

Little Bee Impex **Appellant**

Vs.

CCE, Ludhiana **Respondent**

Appearance

Shri. Joy Kumar, Advocate- for the appellant
Shri. Harvinder Singh, AR. - for the respondent

CORAM: **Hon'ble Mr. Ashok Jindal, Member (Judicial)**

FINAL ORDER NO: **63253 / 2018**

Per Ashok Jindal:

The appellant is in appeal against the impugned order wherein duty has been demanded on the ground that the appellant has not directly exported the goods.

2. The facts of the case are that the appellant is 100% EOU and the consignments of natural honey were exported through merchant exporter who received the goods and issued H form of Central Sales Tax Department to the appellant.

3. The case of the Revenue is that the appellant being 100% EOU, therefore, the export is to be made by the appellant directly and not through the merchant exporter against H form. In these circumstances, the proceedings were initiated against the appellant to demand duty on

the goods exported through merchant exporter and imposed penalty. The matter was adjudicated. The demand of duty was confirmed and penalty was also imposed. Against the said order, the appellant is before me.

4. Heard the parties.

5. Considering the fact that the said issue has been examined by this Tribunal in the case of ***Sigma Pneumatics pvt. Ltd. reported in 2017 (353) ELT 245 (Tri. Del.)*** wherein this Tribunal observed as under:

> *"4. After hearing the learned Counsel for the Department and on perusal of record, it appears that the main issue involved in the present appeals is, whether the demand of Central Excise duty against the assessee in respect of goods said to be exported through merchant exporter and EOUs is correct or not, particularly when the respondent- assessee has submitted Form H issued by the State Sales Tax Departments as proof of export. The adjudicating authority in its order has demanded the duty on the goods which have been deemed to have been exported. Thus, there is no dispute regarding export of the said goods. Regarding the goods which were not directly exported from the unit, the Commissioner (Appeals) has relied upon the ratio laid-down by the Tribunal in the case of Vadapalani Press vs. CCE, Chennai -2007 (217) ELT 248 (Tri. Chennai). When the export of the goods is not in question, then there is no justification to demand the Central Excise duty on the goods which have been deemed to be exported.*
> *5. It may be mentioned that Hon'ble High Court of Madras in the case of Ford India Pvt. Ltd. vs. Assistant Commissioner of Central Excise, Chennai – 2011 (272) ELT 353 (Mad.) has observed that-*
> *"the procedural infraction of Notification/ Circulars are to be condoned, if exports have really taken place and that the substantive benefit cannot be denied on procedural lapses".*
> *6. In the instant case, as stated above, the deemed export is not in question as has already been mentioned in the order of the adjudicating authority. When it is so, then by following the ratio (supra), we are not inclined to interfere with the impugned order and the same is hereby sustained alongwith the reasons mentioned therein."*

6. Considering the fact that the said issue has already been settled by this Tribunal holding that when the goods has been exported through merchant exporter, the same shall be 'deemed as export' made by the appellant only. In that circumstances, no proceedings were warranted against the appellant, therefore, the impugned order is set aside.

In result, the appeal is allowed with consequential relief.

(Dictated and pronounced in the open court)

Ashok Jindal
Member (Judicial)

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