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

Appeal No.C/341/2010

[Arising out of Order-in-Original No.244/2010 dt. 03.06.2010 passed by Commissioner of Customs (Airport & Aircargo), Chennai]

EID Parry (India) Ltd. Appellant

Versus

Commissioner of Customs (Air)
Chennai Respondent

Appearance :

Shri N. Venkatraman, Sr. Advocate
Shri S. Muthuvenkatraman, Advocate
For the Appellant

Ms. P. Hemavathi, Commissioner (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 10.05.2018

FINAL ORDER No. 41822 / 2018

Per Bench

The facts of the case are that M/s.EID Parry (India) Ltd., the appellants herein had imported Raw Sugar without payment of Customs Duty under Advance Licence dt. 03.08.2005 and

19.05.2005. Appellants manufactured White Crystal Sugar out of the said raw material which was exported thereafter. A quantity of 68707 quintals of White Crystal Sugar was sold to M/s.Cargill India Pvt. Ltd., Gurgaon, Haryana (hereinafter referred to as Cargill) on payment of appropriate Central Excise duty during March 2006. Subsequently Cargill exported the same quantity of white crystal sugar. Cargill filed rebate claim dt. 10.08.2006 for an amount of Rs.62,17,891.50 being the duty paid on the said 68707 quintals of white crystal sugar and PP woven sacks purchased from appellants availing benefit of Notification No.21/2004-CE (NT) as amended. The original authority sanctioned amount of Rs.52,55,894/- to Cargill. However, it appeared to the department that sugar cess of Rs.9,61,898/- is not eligible for sanction as rebate in terms of the meaning of “duty” explained in the Notification No.21/2004-CE (NT), hence show cause notice was issued to Cargill. Department took the view that as evidenced in the shipping bills, appellant had exported white crystal sugar through merchant exporter, Cargill, who in turn availed rebate under Rule 18 & 19 of Central Excise Rules. As the goods had already been cleared by appellant to Cargill on payment of duty, it appeared that rebate has been availed in violation of condition No.(v) of the above notification and that appellants had availed both benefits of duty free import and benefits of duty free import and rebate. Show cause notice was issued to appellant proposing recovery of demand of duty forgone amounts of Rs.25,84,93,386/- and Rs.17,17,17,924/- in respect of the two advance licenses with interest thereon, confiscation of the imported goods which were released and imposition of penalty under Section 112 (a) , 114A of the Customs Act, 1962. In adjudication, the Commissioner vide impugned order dt. 3.6.2010 held that condition of Customs Notification No.95/2004 [condition (v)] was violated by the appellant and accordingly confirmed the proposal for demand of duty forgone with interest, as proposed in the SCN, however dropped penal proceedings invoked. Hence this appeal.

2. When the matter came up for hearing, on behalf of the appellants, Ld. Senior Counsel Shri N. Venkatraman made oral and written submissions which can be summarized as under :

i) Notice was issued to the appellant based on a wrong premise that condition (v) of Notification No.93/2004-Cus. is related to claiming of rebate on resultant products under Rule 8 of Central Excise Rules whereas the condition after amendment and issue of corrigendum in F.No.605/50/2005-DBK dated 17.05.2005 covered only to claiming of rebate of duty paid on inputs used in the manufacture of resultant product.

ii) Moreover, the condition (v) is related to the appellants as the importer to whom alone the subject Advance Authorizations / licences had been issued. In the impugned order and in the notices the department had taken ‘resultant product’ as ‘inputs’ with reference to the third party exporter who has not manufactured any goods from white sugar and packing at his end is also not ‘manufacture’.

iii) As per Central Excise Tariff only in respect of tariff heading 1702 the packing from bulk packing into retail packing amounts to manufacture.

iv) The condition in which third party exporter exports is not relevant to decide eligibility to exemption for the importer who is the holder of Advance Licenses / Authorizations in question.

v) The Commissioner not only misunderstood the whole issue, wrongly interpreted condition (v) of the Customs Notification 93/2004-Cus. as it existed prior to corrigendum issued amending the condition, also applied such unamended condition for the subject licences which were issued after such amendment, but failed to take note that the appellants had paid back the rebate claimed on PP bags and no repayment of rebate on ‘white sugar’ was required to be made as per Central Excise adjudication proceedings which have reached finality.

3. On the other hand, Ld. A.R Ms. P. Hemavathi supported the impugned order.

4. Heard both sides and have gone through facts of the case. We find merit in the assertion of the Ld. Senior Advocate. We find that CBEC vide its circular dt. 22.1.2007 on the subject of export of excisable goods under Rule 18 of the Central Excise Rules, 2002 by using the materials imported under advance licence, inter alia had clarified as follows :

> "2.3 In 2002, the CE Rules, 1944 were superseded by CE Rules, 2002 and the provisions contained in Rule 12(1) of CE Rules, 1944 were re-corporated in Rule 18 of CE Rules, 2002. However, at the time of issue of notification No. 43/2002-Cus. an inadvertent error occurred in condition (v) of the said notification inasmuch as, it debarred the benefit of the Advance Licence Scheme if the licence holder had availed of any rebate of duty under Rule 18 of the CE Rules 2002 [under which an exporter could avail of the rebate of excise duty paid on the materials used in the manufacture of export products as also the terminal excise duty paid on the export products]. Since right from the beginning the objective of condition (v) was to debar the simultaneous availment of rebate of duty paid on the materials and the benefit of Advance Licence Scheme only (there was no bar in the said condition from availing of rebate of terminal excise duty paid on the export goods and the benefit of Advance License Scheme), in order to set right the anomaly, a Corrigendum was issued vide PN 9/2002, dated 29-11-2002 to provide that an exporter operating under Advance Licence Scheme could also avail of the rebate on terminal excise duty paid on the resultant export product under Rule 18. This was a conscious decision because, as explained above, the earlier notifications issued under Advance Licence Scheme (e.g. Notification No. 203/92-Cus., dated 19-5-92 etc.) had contained the same provision all along.
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> 3. After issue of this corrigendum the DGCEI sought a clarification about its validity on the ground that in the subsequent Notification No. 93/2004-Cus. issued under Advance Licence Scheme, the advance licence holder was debarred from availing the rebate facility under Rule 18 under which, as mentioned above, an exporter could avail of the rebate of excise duty paid on the materials used in the manufacture of export products as also the terminal excise duty paid on the export products. Subsequently, after examination of the issue, a corrigendum was issued to Notification 93/2004-Cus. vide Public Notice 2/2005, dated 17-5-2005 in order to restore the status *quo ante* i.e. the

> licence holder was debarred from availing of rebate of duty paid on materials used in the manufacture of export goods. The corrigendum was issued to set right an inadvertent error which occurred for the second time at the time of issuance of Notification No. 93/2004-Cus. pursuant to coming into force of the new Foreign Trade Policy w.e.f. 1-9-2004. The inadvertent error crept in because of a minor variation in the language of Rule 12(1) of CE Rules, 1944 (which had two parts - one dealt with rebate of duty paid on the excisable goods and the other dealt with rebate of duty paid on materials used in the manufacture of export goods) and the new Rule 18 under which both the facilities are available without differentiation being shown part wise."

In view of the aforesaid clarification, the impugned order cannot sustain and is therefore set aside and appeal is allowed with consequential relief, if any, as per law.

(Operative part of the order pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S.)
Member (Judicial)

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