CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHENNAI

Regional Bench – Court No. III

Customs Appeal No.42154 of 2017

(Arising out of Order-in-Appeal C.Cus. I No.127/2017 dt. 14.07.2017 passed by the Commissioner of Customs (Appeals-I),Chennai)

M/s. Volex Interconnect (India) Pvt. Ltd. : Appellant
22/1-A, First Street, Kazura Gardens,
Neelankarai
Chennai 600 041.

VERSUS

The Commissioner of Customs(Chennai-VII) : Respondent
Airport & Aircargo
New Custom House, Meenambakkam,
Chennai 600 027.

APPEARANCE:

Shri Raghavan Ramabhadran, Advocate
For the Appellant

Shri M. Jagan Babu, AC (AR)
For the Respondent

CORAM : HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER(TECHNICAL)

C/42154/2017

FINAL ORDER No. 40408 / 2020

DATE OF HEARING: 12.02.2020
DATE OF DECISION:17.02.2020

PER : SULEKHA BEEVI C.S

M/s.Volex Interconnect (India) Private Limited, the appellant herein imports telecom cables. The Appellant classified these cables under the CTH 8544 4999 and claimed the benefit of Basic Customs Duty (BCD) exemption under Sl.No.28 of Notification No.25/2005-Cus. dated 01.03.2005.

2. After import, the Appellant cuts these cables to required lengths and connectors were affixed at both ends. Doubting the eligibility of the benefit under Sl.No.28 of the Notification No.25/2005-Cus, investigations were initiated by the department and Show Cause Notice dated 04.03.2014 was issued to the Appellant denying the exemption under Sl.No.28 of the Notification No.25/2005-Cus on the following grounds :

a. The cables could be used at an operating voltage of above 80V

b. The cables have been misdeclared as operating voltage less than80 volts to avail the exemption under the Notification No.25/2005-Cus

c. If the application voltage of the cables were to be criteria, there would be no necessity for two distinct entries under Sl.No.28 & 29.

3. Learned Commissioner *vide* Order-in-Original dated 31.03.2017 confirmed the proposals in the Show Cause Notice. The said Order-in-Original was affirmed by the Ld. Commissioner (Appeals) *vide* Order-in-Appeal dated 14.07.2017. Hence this appeal.

4. On behalf of the appellant, Ld. counsel Shri Raghavan Ramabhadran appeared and argued the matter. He submitted that the appellant is eligible for the exemption under Notification No.25/2005-Cus. dated 1.3.2005. The benefit under Sl.No.28 of the said notification has been denied by the department alleging that the cables are capable of carrying more than 80 Volts. The cables imported by the appellant even though are capable of carrying more than 80 Volts would be eligible since they have been used in telecom equipment having operating voltage less than 80 Volts. Thus disallowance of exemption under Sl.No.28 is erroneous in law. He adverted to the entry in Sl.No.28 in the notification and argued that as per entry at Sl.No.28, the exemption is eligible for electric conductors for a voltage not exceeding 80 Volts for a kind used for telecommunications. The word used is 'for' and not 'of. So, it is not necessary that the cables imported by the appellants should be of operating voltage less than 80 Volts. The word 'for' used before the voltage relates to the purpose for which the cables are to be used

and not per se qualify voltage of the cables. He relied upon the decision of the Hon'ble Supreme Court in the case of *Indian Chamber of Commerce Vs CIT* (1976) 1 SCC 324 to argue that the word 'of' connotes "the end with reference to which anything is done". Under Sl.No.28, the exemption is available for cables which are used in less than 80 volts equipments.

5. Alternatively, the Ld. Counsel submitted that the appellant would be eligible for the exemption under Sl.No.33 of the same notification. For the subsequent period, the appellant had claimed exemption under Sl.No.33 and the department allowed the same. Further, in the appellant's own case vide Final Order No.41901/2018 dt.2.7.2018, the Tribunal after considering the appellant's plea with regard to exemption under sl.No.28 as well as Sl.No.33 had allowed the eligibility of exemption under Sl.No.33. Though the appellant put forward a plea before the department claiming exemption under Sl.No.33, the same was disallowed alleging that appellant has not complied with the procedure under Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules,1996 (1996 Rules). The Tribunal in the appellant's own case vide final order stated supra had applied the decision in the case of *Formica India Division Vs CCE* – 1995 (77) ELT 511 (S.C) to extend the benefit of notification by holding that appellant had substantially complied with the conditions under 1996 Rules. Ld. Counsel was fair enough to advert our attention to the recent judgment of the Hon'ble

jurisdictional High Court in *Commissioner of Customs (Airport-Cargo) Vs Medreich Sterilab Ltd.*- 2020 (1) TMi 439 _ MADRAS HIGH COURT wherein the Hon'ble jurisdictional High Court observed that the benefit of exemption in the notification would not be eligible if the procedure prescribed in the 1996 Rules have not been complied. He explained that the said decision was in respect of plea put forward by the appellant claiming exemption of duty under the notification wherein the condition for the exemption was not complied. The assessee therein was required to fulfil a particular condition to avail the exemption and the Hon'ble High Court was of the view that without fulfilling the condition of obtaining registration the exemption cannot be availed. In the present case, the appellant has claimed the benefit under Sl.No.33 of as an alternative claim and could not be expected to have fulfilled the condition under 1996 Rules. Therefore, the said decision of the Hon'ble jurisdictional High Court in *Medreich Sterilab Ltd.* (supra) though has adverted to the 1996 Rules would not be applicable to the facts of the appellant's case. It is submitted by him that the decision in *Formica India Division* (supra) would be squarely applicable. The procedures has not been followed by the appellant since they claimed exemption under Sl.No.28. Since the products manufactured fall under Sl.No.29, they are eligible for benefit of exemption under Sl.No.33 since the request for this exemption has been subsequently raised, the assessee could not be expected to have fulfilled the requirement of complying the procedure under 1996 Rules.

6. Ld.A.R Shri M. Jagan Babu supported the findings in the impugned order. He has stressed that the appellant is not eligible for exemption under entry at Sl.No.28 and therefore the authorities below have rightly disallowed the claim of concessional duty. The appellant has not put forward the claim of benefit exemption under Entry 33 at the time of filing the Bill of Entry and they have not complied with the procedural requirements as per 1996 Rules to avail benefit of exemption under Sl.No.33. This being so, the authorities below have rightly rejected the claim of exemption both under Sl.No.28 as well as under Sl.No.33.

7. Heard both sides.

8. The very same issue as to whether the appellant is eligible for exemption under Sl.No.28 and Sl.No.33 was considered by the Tribunal in the appellant's own case vide Final Order No.41901/2018 dt.2.7.2018. The Tribunal in the said case disallowed the claim of the appellant under Sl.No.28. However after placing reliance on the decision of the Hon'ble Supreme Court in the case of *Formica India Division* (supra) the claim of benefit exemption under S.No.33 of the very same notification was allowed. Relevant portion of the said Tribunal's final order dt. 2.7.2018 is reproduced as under :

> "6.4 In any case, appellants could very well have been under a reasonable belief, albeit misconceived, that they were eligible for exemption under entry at Sl.No.28. Further, we also have it on record

> from the Ld. Advocate, during the course of hearing, that the appellants subsequent to the dispute, have been importing the same goods with benefit of Sl.No.33 of the Notification without any controversy. It is also seen that the appellants vide a letter addressed to the Commissioner of Central Excise dt.22.4.2010, i.e. even before the issue of SCN on 1.6.2010, had conveyed their intention to avail exemption under Sl.No.33 of the Notification for future exports. We then find that appellant is correct in their reliance on the law as laid down by the Hon'ble Apex Court in Formica India Division Vs CCE – 1995 (77) ELT 511 (SC) which held that exemption cannot be denied on the ground that required procedures having not been followed.
>
> 6.5 In view thereof, while holding that appellant cannot take benefit of the exemption under Sl.No.28 of the notification No.25/2005-Cus. for the impugned imported goods, we hold that they can very well avail the benefit under Sl.No.33 of the same notification instead. So ordered."

9. In the decision of the Hon'ble jurisdictional High Court in the case of *Medreich Sterilab Ltd.* (supra), the Hon'ble jurisdictional High Court had occasion to consider as to whether the requirement of fulfilling the conditions in the 1996Rules is only procedural or directory in nature. The Hon'ble High Court in paras 8 & 9 observed that assessee would be entitled to exemption only if the procedure as required is complied. In the said case, the assessee was all through claiming the benefit of notification Sl.No.80B. In order to avail the benefit of this exemption the assessee had to fulfil the requirement of obtaining registration which was not fulfilled by the assessee whereas in the present case, the appellant has claimed the benefit of Sl.No.33 and it cannot be expected that they would have complied with the conditions under this serial number since they were harping upon Sl.No.28 to claim exemption although they could have claimed the benefit of Sl.No.33. The Hon'ble Supreme Court in the case of *Formica India Division* (supra) had observed as under :

“2. The High Court, however, took note of the fact that no contention had been raised before the Tribunal that the appellants should be permitted to meet the requirements of Rule 56A of the Central Excise Rules and, therefore, they cannot be permitted to avail of that benefit in a Writ Petition brought under Article 226 of the Constitution. That indeed was a technical view to take because if the appellants were entitled to the benefit of the Notification No. 71/71-C.E., dated 29th May, 1971, to deny that benefit on the technical ground of non-compliance with Rule 56A would tantamount to permitting recovery of double duty on the intermediary product. The circumstances in which the appellants did not pay the duty on the intermediary product before putting the same to captive consumption for producing that stage, the appellants contested the correctness of the classification and had, therefore, not paid the duty on the intermediary product. When it was found that they were liable to pay duty on the intermediary product and had not paid the same, but had paid the duty on the end product, they could not ordinarily have complied with the requirements of Rule 56A. Once the Tribunal took the view that they were liable to pay duty on the intermediary product and they would have been entitled to the benefit of the notification had they met with the requirement of Rule 56A, the proper course was to permit them to do so rather than denying to them the benefit on the technical ground that the point of time when they could have done so had elapsed and they could not be permitted to comply with Rule 56A after that stage had passed. We are, therefore, of the opinion that the appellants should be permitted to avail of the benefit of the notification by complying at this stage with Rule 56A to the satisfaction of the Department."

10. The Tribunal has applied the decision in the case of *Formica India Division* in the appellant's own case. Following the decision of the Tribunal in the appellant's own case vide final order cited supra as well as the decision of Hon'ble Supreme Court in the case of *Formica India Division* (supra), we hold that appellant would be eligible for benefit under Sl.No.33 of the Notification No.25/2005-. So ordered.

11. The impugned order to the extent of disallowing benefit of exemption is set aside along with demand confirmed and interest thereon as well as set aside the penalties imposed. Appeal is allowed with consequential relief, if any, as per law.

(Order pronounced in court on 17.02.2020)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

gs