CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNALSOUTH ZONAL BENCH CHENNAI

Appeal Nos.C/4/2009 & C/5/2009

[Arising out of Order-in-Original No.331/2008 dt. 31.10.2008 passed by the Commissioner of Customs (Airport & Aircargo), Chennai]

1. D.K. Polyn Industries
2. Mahendra Kumar K. Kapadia — Appellant

Versus

Commissioner of Customs (Airport)
Chennai — Respondent

Appearance:

None
For the Appellant

Shri A. Cletus, ADC (AR)
For the Respondent

CORAM :

Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Madhu Mohan Damodhar, Technical Member

Date of hearing / decision :24.03.2017

FINAL ORDER No. 40579-40580/2017

Per D.N. Panda

Despite notice sent on 28/2/2017 none present for the appellants. Appeals are of 2009 and stay of operation of impugned order was granted on 26.3.2009. Revenue's interest has been prejudiced without appearance by the appellant enjoying benefit of

Customs, Excise & Service Tax Appellate Tribunal interim stay granted 8 years back. Therefore Appeal has been taken up for disposal by this order with the assistance of Revenue.

2. When the records were perused, it is found that in the de novo adjudication, ld. adjudicating authority came to the conclusion that the goods attempted to be exported were of inferior quality to claim DEPB credit of Rs.45,76,163/-. When market value of the goods was ascertained, that was arrived at Rs.63,18,504/-. The DEPB claim was accordingly restricted to 50% of such market value.

3. Ld. D.R says that there is a ceiling prescribed by para 4.41 of Hand Book of Procedures, Volume-I of the EXIM Policy and ceiling of DEPB credit was prescribed to serve useful purpose of law. Customs made thorough examination of the goods and found that inferior quality of goods were attempted to be exported which is not permitted to claim inflated DEPB amount and enriched at the cost of Customs. He also submits that there was subterfuge to Revenue. The modus operandi followed by appellant without numbering 30 cartons to escape the notice of the Customs has prejudiced its interest.

4. Heard Revenue and perused the record.

5. It is an established fact on record that appellants could not rebut inferior quality of the goods attempted to be exported. So also, it failed to rebut market value determined by the Customs which was Rs.63,18,504/-.The claim of DEPB of Rs.45,75,163/- exceeded 50% of the ceiling prescribed by the EXIM Policy. Without dilating the matter further, observing modus operandi of appellant questionable as recorded by ld. adjudicating authority, not controverted by leading any

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cogent evidence by appellant to discard the finding of the adjudicating authority, both the appeals are dismissed.

(Dictated and pronounced in open court)

05/04/2017

(Madhu Mohan Damodhar)
Technical Member

4.5.2017

(D.N. Panda)
Judicial Member

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Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति/Certified True Copy

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