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

Appeal Nos. C/210, 211/2007

[Arising out of Order-in-Appeal C.Cus.No.119/2007 dt. 26.2.2007 passed by the Commissioner of Customs (Appeals), Chennai]

Marina Shoes Ltd. Appellant

Versus

Commissioner of Customs, Chennai Respondent

Appearance:

Shri T. Ramesh, Advocate
For the Appellant

Shri A. Cletus, ADC (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 : 25.07.2017

FINAL ORDER No. 41871-41872/2017

Per Bench

The brief facts of the case are that M/s. Marina Shoes Pvt. Ltd. (appellants herein) had imported "unit soles made out of polyurethane" from M/s. Caprice Schuhproduktion GMBH, Germany

Customs, Excise & Service Tax Appellate Tribunal vide Bills of Entry No.224875 dated 23.6.1999 and 253632 dated 30.12.1999 for assessable value of Rs.11,90,073/- and Rs.4,80,567.18 respectively. The importers cleared the goods duty free in terms of Notification No.32/97-Cus dated 01.04.97 with the condition to re-export as "ladies shoes/sandals etc." But they failed to produce the end-use certificates from the jurisdictional Asst. Commissioner of Central Excise (Chrompet Division), duly supported by certified export documents such as shipping bills, export invoices, value addition statements of Chartered Accountant, BRCs showing realization of foreign exchange in fulfilment of the export obligation under the said notification. However, the appellants stated that they had exported the goods under DEPB shipping bills. In view of the fact that the appellants had availed benefit of both the Notification No.32/97 (jobbing) as well as No.34/97 (DEPB), a clarification from DGFT, New Delhi was sought for by the jurisdictional Central Excise authorities, who in turn clarified that imports under Notification No.32/97 are basically for jobbing and therefore such exports could not be made under DEPB Notification 34/97. In view of the above, demands were raised for Rs.6,40,450/- and Rs.4,71,539/- for the imports made against the above said bills of entry which was subsequently confirmed vide Orders-in-Original No.2298/2004 and 2299/2004 both dated 14.06.2004. On appeal, Commissioner

(Appeals) vide impugned order dt. 26.02.2007 upheld the order of original authority.

2. On 25.07.2017 when the matter came up for hearing, on behalf of the appellant Ld. Advocate Shri T. Ramesh submits that the only issue involved in the present case is with regard eligibility of Notification No.32/97 with respect to goods imported free of duty for jobbing and re-exports and not with Regard to Notification No.34/99 concerning export under claim of DEPB. Ld. Advocate concedes that appellant having imported the goods for jobbing under Notification No.32/97-Cus., they cannot avail DEPB credit under Notification No.34/97-Cus. The counsel states that benefit of Notification No.32/97-Cus. could however, not be denied to them since necessary conditionalities thereof has been complied with. He relies upon the case law of Tribunal's decision in *Sierra Trading (P) Ltd. Vs CC Chennai* – 2011 (269) ELT 246 (Tri.-Chennai).

3. On the other hand, Shri A. Cletus, Ld. A.R supports the adjudication order.

4. We find that this Bench of the Tribunal has considered the issue concerning eligibility of DEPB credit in respect of exports of goods manufactured out of goods imported under Notification NO.32/97-Cus. for purposes of jobbing and has held that such DEPB benefit will not apply to such goods vide Final Order No.41452/2017 dt. 04.08.2017 in the case of *Presidency Kid Leather Pvt.Ltd. Vs*

Commissioner of Customs (Exports), Chennai. Relevant paras of the said decision are reproduced below for ready reference :

> "5.5 Thus it is seen that the scope and purpose of this DEPB scheme was to compensate the exporter for the incidence of customs duty suffered **on the import content of the export product**. Such neutralization was provided by way of grant of duty credit against the export product. **Hence eligibility to the DEPB scheme presupposed import content in the exported product which has suffered customs duty.** No doubt, value addition achieved on the exported product was also taken into account while determining the rate of DEPB credit (Para 7.25). However that provision was only in the nature of an incremental benefit to the exporter, apart from the main scope and intent of neutralizing customs duty, incidence on import content. In our view therefore, the DEPB scheme did not provide for a situation where the import content in the exported product did not suffer any customs duty. By implication, the DEPB scheme did not envisage grant of duty credit only on the value addition portion, in a situation where the import content did not suffer incidence of customs duty. Therefore goods imported with full customs duty exemption or goods with NIL rates of customs duty cannot then become eligible for DEPB credit when processed and resultant product reexported even if there is value addition in the export product.
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> 5.6 In the appeal at hand, appellant has imported goods with full exemption from customs duties under Notification No.32/1997-Cus, which is a specific exemption to goods imported for execution of an export order for jobbing. Amongst various conditionalities of that notification, there is a requirement that the imported goods are utilized only for the discharge of export obligation and that FOB value of the resultant products exported is at least 10% more than the CIF value of the goods imported. We therefore find that the Notification No.32/97 is a beneficial provision to facilitate such processes involving jobbing without creating the need for the job worker in India to suffer incidence of customs duties on the imported goods. Precisely due to the requirement that import content of export goods have to necessarily suffer incidence of customs duty for claiming DEPB credit, the said notification No.32/97-Cus also laid down that DEPB was not applicable to export of a commodity or product, *interalia*, manufactured and or exported by a 100% EOU or by an

unit in a free trade zone or export processing zone etc. In fact, even in the case of export of goods of foreign origin, DEPB is made inapplicable, unless the goods have been manufactured or processed or on which similar operations have been carried out in India. Apart from providing for different DEPB rates for different types of exported goods, a value cap was also applicable which was with respect to the FOB value of exports. The DEPB rate was applied on the FOB value or FOB cap whichever was lower.

5.7 Interestingly, the very issue in this dispute was addressed by the CBEC in their Circular No.26/2002 dt. 16.5.2002, which unequivocally clarified that once the party has availed the benefit of Customs Notification No.32/97, then they become disentitled to DEPB benefit and that the facility available under 32/97 and 34/97 (DEPB scheme) are exclusive and independent of each other.

5. Be that as it may be, in the present appeal while the goods for jobbing have been imported under Notification No.32/97-Cus. and DEPB benefit on subsequently exported goods may have been claimed, there is however no demand that has been made by the department in respect of such DEPB credit availed. On the other hand, we find that the dispute herein is limited only to whether beneficial duty exemption provided under Notification No.32/97-Cus. can be denied even when substantive fulfilment of the conditionalities of that notification have been fulfilled, only on the ground that dual benefit under Notification No.32/97-Cus as also DEPB credit benefit under Notification No.34/97-Cus. cannot be availed. However, on the issue of entitlement of Notification No.32/97-Cus. even when Drawback/DEPB was sanctioned, the Tribunal in *Sierra Trading (P) Ltd.* (supra) relied upon by Ld. Advocate, has held that benefit of

Notification No.32/97-Cus. could not be denied. The relevant portion of this decision is reproduced below :

> "**4.** We have considered submissions from both sides. In this appeal, we are not required to consider whether the drawback and DEPB benefit has been correctly allowed or not as the question in this appeal is restricted to consider whether the appellants are entitled to exemption under Notification No. 32/97. We find that Notification No. 32/97 is not conditional upon not availing the drawback/DEPB benefit.
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> **5.** There is a reference to para 7.12 of the EXIM Policy in another context in relation to imports of patterns, drawings, jigs, tools, fixtures, moulds, tackles, instruments and there is no doubt that Notification No. 32/97-Cus., dated 1-4-1997 has been issued in the context of the said para 7.12 of the EXIM Policy. Under DGFT's letter dated 21-8-2001, it has been clarified that as the DEPB scheme works on the principle of "deemed import content", presuming inputs to be duty-paid, the use of inputs, imported free of cost in terms of Notification No. 32/97 and the resultant product will render such exports ineligible for DEPB benefit. The drawback notifications also stipulate that the rates of drawback schedule shall not be applicable to a commodity if such commodity is a manufactured and exported availing the benefit of Customs Notification No. 32/97. This stipulation is in addition to the restriction in Rule 3 of the Drawback Rules that no drawback shall be admissible if exemption has been availed in respect of inputs.
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> **6.** The DGFT authorities appear to have clarified that imports made under Customs Notification No. 32/97 are for jobbing and exports made using such imports cannot be given DEPB benefits. We are of the view that on the face of such clarifications and provisions, the Department at the most, could have taken action not to allow drawback or DEPB benefits to the appellants. However, we find from the copies of records submitted regarding queries raised, the customs authorities have satisfied themselves that the cost of the soles imported duty-free was not included in the export value and no foreign exchange was paid for the exempted soles and thereafter, they have sanctioned drawback/DEPB.
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> **7.** The legal provisions and clarifications issued, as stated above, authorizes the customs authorities not to allow drawback/DEPB on exports made using material imported duty-free under Notification No. 32/97. But these do not

> come in the way of availing the exemption, provided the conditions stipulated in the exemption notification are satisfied regarding 10% value addition etc. In the peculiar facts of this case, we are of the view that when the customs authorities have allowed drawback/DEPB benefit and no appeal has been filed against the same but they are denying the exemption under Notification No. 32/97, we have no option but to hold that the appellants are eligible for the customs duty exemption under Notification No. 32/97. Consequently, the impugned orders are set aside and the appeals are allowed which are restricted to grant of customs duty exemption under Notification No. 32/97."

The ratio of *Sierra Trading* decision has been followed by Tribunal in *Leather Crafts (India) P. Ltd. Vs Commissioner of Customs, Chennai* reported in 2011 (274) ELT 379 (Tri.-Chennai).

6. In the event, following the ratio set down by the Tribunal in the *Sierra Trading* case, especially when department has not filed any appeal against allowing of DEPB under Notification No.34/97-Cus., we hold that benefit of Notification No.32/97-Cus. cannot be denied to the appellant. In consequence, the impugned order is set aside and the appeals are allowed to the extent of granting of customs duty exemption under Notification No.32/97-Cus.

(Operative part of the order pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

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Customs, Excise & Service Tax Appellate Tribunal

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सहायक पंजीकार / Asst. Registrar
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चेन्नै / Chennai