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

C/248/2011

(Arising out of Order-in-Appeal No. 32/2011 dated 5.4.2011 passed by the Commissioner of Customs & Central Excise (Appeals), Trichy)

Commissioner of Customs, Tuticorin — Appellant

Vs.

M/s. Scotts Garments — Respondent

Appearance

Shri P. Anbuchelvan, Supdt. (AR) for the Appellant
Shri R. Mansoor Ilahi, Advocate 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: **22.12.2017**

Final Order No. 43370/2017

Per Bench

Brief facts of the case are that the respondents filed Bill of Entry dated 8.7.2010 for clearance of 28802.0 Kgs. of 80% acrylic 20% polyester fur fabrics and 67859 sq. mts. of 100% polyester lining. It appeared that the respondents had mis-declared the subject goods as 80% acrylic and 20% polyester fur fabrics as against 57.4% polyester,40.6% polyacrylonirile and 2% cotton knitted pile fabrics with knitted base in order to clear the same without payment of duty under Advance License dated 25.6.2010 issued under Customs Notification No.96/2009. As per the Advance Authorisation, the respondents are obligatory to export Blouson with Lining. The subject imported knitted pile fabric are not used in the Blousons and only artificial fur fabrics are used in the Blousons. In view of the foregoing, as the respondents had cleared the goods without payment of duty, show cause notice was issued to confiscate the mis-declared goods and for imposing penalty. After due process of law, the original authority ordered for reclassification, confirmation of duty with interest, confiscated the goods imposing redemption fine and also imposed penalties. Aggrieved, the respondent filed appeal before Commissioner (Appeals). Vide the order impugned herein, the Commissioner (Appeals) allowed the appeal of the respondent observing that the respondent had got the Advance License amended and modified from Jt. DGFT, Bangalore by including the description of the impugned goods. The department is now before the Tribunal, aggrieved by the said order passed by the Commissioner (Appeals) who set aside the demand, confiscation and the penalties imposed.

2. On behalf of the department, ld. AR Shri P.Anbuchelvam reiterated the grounds of appeal. He stated that the DGFT

cannot issue Advance License retrospectively so as to include the description of the impugned goods also in the license.

3. On behalf of the respondent, ld. counsel Shri R. Mansoor Ilahi appeared and argued the matter. He submitted that in the case of Bhilwara Spinners Ltd. Vs. Union of India – 2011 (267) ELT 49 (Bom.), the Hon'ble High Court has held that such permission given by the DGFT to include the description of the impugned goods also in the license is well within the powers of DGFT. The Hon'ble High Court held that the order of the Larger Bench of the Tribunal is not correct in holding that licensing authorities are not empowered to amend license retrospectively.

4. Heard both sides.

5. Rule 8 of the Foreign Trade (Regulation) Rules, 1993 reads as under:-

> *Amendment of license – The licensing authority may on its own motion or in an application by the licensee, amend any license in such manner as may be necessary or to rectify any error or omission in the license"*

6. In the case of Bhilwara Spinners Ltd. (supra), the Hon'ble High Court has observed that DGFT is empowered to amend or modify the license retrospectively. The Hon'ble High Court in para 22 and 23 has observed as under:-

> "22. The Jt. DGFT has filed an affidavit duly affirmed on 8-3-2011 to the effect that para 2.5 of the Foreign Trade Policy empowers the DGFT to exempt any person or class or category of persons

Customs, Excise & Service Tax Appellate Tribunal

> from any provision of Foreign Trade Policy or any procedure and that the amendments carried out by the DGFT cannot be the subject matter of scrutiny and challenged by the customs authorities. In the present case, the licensing authority has held that the petitioner has fulfilled the export obligation under the 10% EPCG licence, by exporting goods 6 times the CIF value of the capital goods imported and accordingly export obligation discharge certificate has been issued on 21-4-2006. Once the licensing authority has found that the licence conditions have been fulfilled, it would not be open to the customs authorities to contend that the imports under the licence are contrary to law and take action against the licence holder.
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> 23. For all the aforesaid reasons, we set aside the Larger Bench decision of the CESTAT dated 18-1-2008 and the Division Bench decision of the CESTAT dated 11-5-2010 to the extent they hold that the licensing authorities do not have the power to amend the licence with retrospective effect from the date of granting the licence. Consequently, the decision of the customs authorities seeking to recover duty with interest and penalty on the footing that the petitioner has violated condition No. 5 of Notification No. 29/97 is also quashed and set aside."

7. From the impugned order, it is seen that the Commissioner (Appeals) has followed the decision in Bhilwara Spinners Ltd. (supra) to set aside the demand. We do not find any reason to take a different view. The impugned order calls for no interference and the appeal filed by Revenue is dismissed.

(Operative portion of the order was pronounced in open court)

(**Madhu Mohan Damodhar**)	(**Sulekha Beevi C.S.**)
Member (Technical)	Member (Judicial)

Rex

Customs, Excise & Service Tax Appellate Tribunal

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15/01/18
सहायक पंजीकार / Assistant Registrar
सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर अपीलीय अधिकरण,
चेन्नई / CESTAT, CHENNAI - 600 006.