IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. III

Customs Appeal No.41193 of 2013

(Arising out of Order-in-Appeal No.692/2013 dated 10.05.2013 passed by Commissioner of Customs (Appeals), 60, Rajaji Salai, Custom House, Chennai-600 001)

M/s. Pravin Tex, **...Appellant**
10, Thiruneelakandapuram,
North Kongu Main Road,
Tirupur - 641 607.

Versus

Commissioner of Customs (Seaport - Export), **...Respondent**
Custom House,
No.60, Rajaji Salai,
Chennai – 600 001.

WITH

Customs Appeal No.41194 of 2013

(Arising out of Order-in-Appeal No.693/2013 dated 10.05.2013 passed by Commissioner of Customs (Appeals), 60, Rajaji Salai, Custom House, Chennai-600 001)

Mr. S. Viswanathan **...Appellant**
Partner cum Chief Executive Officer
M/s.Pravin Tex, 10, Thiruneelakandapuram,
North Kongu Main Road,
Tirupur - 641 607.

Versus

Commissioner of Customs (Seaport - Export), **...Respondent**
Custom House,
No.60, Rajaji Salai,
Chennai – 600 001.

APPEARANCE:

Shri S. Sankaravadivelu, Advocate
For the Appellant

Shri S. Balakumar, Assistant Commissioner (A.R)
For the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

DATE OF HEARING : 06.04.2023
DATE OF PRONOUNCEMENT: 11.04.2023

FINAL ORDER No.40261-40262/2023

Order : [Per Ms. Sulekha Beevi C.S.]

1. The issue involved in both these appeals being the same, they were heard together and disposed of by this common order.

2. The appellants namely M/s.Pravin Tex had obtained 4 (Export Promotion Capital Goods (EPCG) licences in 1997-98 for importation of knitting and embroidery machines. The appellant Shri S. Viswanathan is the partner of M/s.Pravin Tex, Tiruppur. They imported and cleared knitting machines and embroidery machines valued at Rs.1,35,87,242/- vide 4 Bills of Entry at concessional rate of duty under the said EPCG licences by availing Customs Exemption Notification No.110/95 dated 05.06.1995. The duty foregone amounted to Rs.29,99,322/-. They later produced documents regarding fulfilment of export obligation which included direct exports by the appellant and also exports made through third parties. On verification it was found that neither the EPCG licence numbers nor the name of the importer namely the first appellant herein were seen endorsed on the shipping bills pertaining to the exports made by third parties. On investigation, it revealed that in few shipping bills endorsements were mentioned only in the quadruplicate copies of the shipping bills and not in the original and duplicate copies of shipping

bills. It was found that the appellant had knowingly submitted manipulated shipping bills to the Customs and to the DGFT to obtain Export Obligation Discharge Certificate. Since the exports said to have been made through third parties could not be established by the required endorsement on the shipping bills, it appeared to the department that the appellant did not fulfil the export obligation as per these licences. Thus, the condition of duty exemption availed under the Notification No.110/95 dated 05.06.1995 was violated and the full duty foregone amounting to Rs.29,99,322/- became payable by the appellant along with interest. Show cause notice dated 03.04.2009 was issued proposing to demand duty along with interest and also for imposing penalties. After due process of law, the original authority held that in view of the manipulation on the quadruplicate copies, the exports effected vide impugned shipping bills cannot be counted towards fulfilment of export obligation under the 4 EPCG licences and that appellant is liable to pay duty of Rs.29,99,322/- along with interest. An option was given to the appellant to redeem the goods on payment of fine of Rs.15 lakhs under Section 125 (1) of the Customs Act, 1962. The original authority imposed a penalty of Rs.5 lakhs on the appellant-importer under Section 112 (a) of Customs Act, 1962. A penalty of Rs.1 lakh was imposed on the partner Mr. S.Viswanathan under Section 112 (a) of the Customs Act, 1962. Penalty of Rs.1 lakh each was imposed on the third party exporters under Section 112 (a) of Customs Act, 1962. Aggrieved by the demand of duty as well as the penalties imposed, the appellants filed appeals before the Commissioner (Appeals) who upheld the same. Hence these appeals.

3. Ld. Counsel Shri S. Sankaravadivelu appeared and argued on behalf of the appellants. It is submitted that the appellants had obtained 4 EPCG licences issued by the Joint Director General of Foreign Trade (JDGFT), Coimbatore for importation of knitting and embroidery machines. The appellants exported directly US$ 32,43,853.34 worth garments and US$ 19,10,190.39 worth garments through third parties. These exports were made under 162 shipping bills through Chennai Seaport and Airport, Kochi, Trivandrum, Tuticorin, Tiruppur ICD and Coimbatore ICD. Appellants had submitted relevant documents and obtained Export Obligation Discharge Certificate (EODC) issued by JDGFT, Coimbatore. Later, SIIB of Customs, Chennai recorded statements of six third party exporters. It is the case of the department that the EPCG licence numbers and the name of the appellant were not entered in the original and duplicate shipping bills. The third party exporters had given the quadruplicate copies to the appellant to use the documents for obtaining EODC. It is alleged by the department that out of 162 shipping bills, 9 original and 12 duplicate copies did not contain the endorsement with regard to name of the appellant and EPCG licence number. Though the appellants made repeated requests to furnish the original and duplicate of all 162 shipping bills to verify and respond to the allegations made, the department did not handover any such documents. The allegation as well as confirmation of demand has been made on the basis of a few original and duplicate copies of shipping bills. Further, the department has relied upon the statements recorded from third party exporters. Though the appellant requested for cross examination of these witnesses, the same was denied. It is argued by the Ld. Counsel that the demand has been raised without proper

evidence and without following the principles of natural justice. The department having not furnished copies of the 162 shipping bills cannot confirm the demand merely on the basis of a few shipping bills. Further, the statements recorded did not have any evidentiary value unless corroborated with documents. So also, the appellants have not been allowed to cross examine these witnesses which would also render these statements as not admissible evidences. Other than alleging that the endorsements of the name of appellant as well as the EPCG licence numbers are not properly mentioned in the shipping bills, there is no averment that the exports effected through these shipping bills would not meet the export obligation against the licences issued. Ld. Counsel stressed that the JDGFT was satisfied that the export obligation was met and had issued the EODC to the appellant. To support the argument that non-supply of documents vitiate the proceedings, the decision of the Tribunal in the case of *S.N.S Containers P. Ltd. Vs CCE, Jaipur* - 2010 (261) ELT 1077 (Tri.-Delhi) was relied. Though it is alleged by the department that there is manipulation in the shipping bills there is no evidence to support the same except the statement by the witnesses which have not been subjected to cross examination. It is argued by him that mere suspicion however grave cannot substitute truth. Ld. Counsel prayed that the appeals may be allowed.

4. Ld. A.R Shri S. Balakumar appeared and argued for the department. He supported the findings in the impugned order. It is submitted by him that appellant had fabricated / manipulated the shipping bills to show that some exports were made by third party exporters so as to fulfil the export obligation against their EPCG licences. Shipments were made through Chennai Sea and Airport, Tuticorin,

Cochin, Trivandrum in and Tiruppur. The name of the appellant and EPCG licence numbers were not originally available on the shipping bills at the time of export which fact has been confirmed by the letters received from various custom houses and the statements of third party exporters. This fact has been clearly established and therefore the duty confirmed is legal and proper.

5. Heard both sides.

6. The main contention raised by the appellant is that they have not been supplied with copy of 162 shipping bills which is alleged to have been manipulated by the appellant. Thus, the position is that the relied upon documents (RUD) have not been served to them. Undisputedly, only copies of 8 originals and 4 duplicate shipping bills have been supplied to the appellants. Though it is alleged that all the 162 shipping bills were manipulated and the entire duty forgone has been confirmed, the department has not been able to furnish these documents to the appellant. Needless to say that appellant has to be furnished with all documents relied by department so that they are put to notice to know about the allegation and they are given a fair chance to defend the case. Further evidence relied by the department are statements of few third party exporters. Though the appellant requested for cross examination of these witnesses, the department has not acceded to the request. In para-15 of the Order-in-Original dated, the original authority has recorded as under :

> *"15. The Licensee-Noticee has also requested for cross-examination of all the persons, whose statements are relied upon in the proceedings. However, it is not known what is going to be achieved by that when facts and circumstances of the case clearly indicate, rather establish, manipulation in quadruplicate copies of the subject Shipping Bills. Hence I find*

> *that the cross-examination is not at all warranted here and this request of the Licensee-Noticee is no more than an attempt to protract the adjudication proceedings."*

7. It is seen that there is complete violation of the principles of natural justice by not supplying the copies of relevant RUD as well as not allowing the cross examination of the witnesses even after the request made by the appellant.

8. The department cannot confirm the demand on the basis of assumption and presumptions. The allegations raised in the SCN have to be established by evidence. The noticee has a right to get the copies of documents. Department has to record reasons for denying the request for cross examination. The cross examination cannot be denied stating that no purpose will be achieved. The department has not been to establish the allegations raised in the SCN and further there is blatant violation of principles of natural justice. For these reasons, the demand cannot sustain and requires to be set aside which we hereby do.

9. In the result, the impugned order in respect of these appellants is set aside. The appeals in respect of these appellants are allowed with consequential relief, if any, as per law.

(Pronounced in the open court on 11.04.2023)

Sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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