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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. C/704 /2005 - CU[DB] Date 25/09/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S MODERN SUITING LTD, ALWAR (RAJ)
C/O MODERN GROUP OF INDUSTRIES, A-4,
VIJAY PATH, TILAK NAGAR, JAIPUR

M/S MODERN SUITING LTD, ALWAR (RAJ) Appellant

Vs

THE COMMISSIONER OF CENTRAL EXCISE, JAIPUR I Respondent

I am directed to transmit herewith a certified copy of Final order No. C/349/08-CUS. DATED 03.09.08

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent THE COMMISSIONER OF CENTRAL EXCISE,
COMMISSIONERATE-I,
NCR BUILDING, STATUE CIRCLE, C-SCHEME, JAIPUR

2. Adv. / Consult MR.K.K ANAND, ADV.,
A-5,BASEMENT.LAJPAT NAGAR-III,
NEW DELHI-24

3 S.D.R
4 J.C.D.R.
5 Bar association. CESTAT. New Delhi
6 M/s. Deeparchi Publications. M-93. Marg. 46. Saket. New Delhi 110017
7 M/s Centax Publictions (P) Ltd.. 1512-B. Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony. New - 3
8 Excise & Customs cases. B-37. Sector -1. NOIDA - 201301 Gautam Budh Nagar. (U.P.)
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 Nidheshak publications. I.P.Estate. new Delhi
11 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88). Thyagaraya Road. T. Nagar.Chennai
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-1
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Assistant Registrar

(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Customs Appeal No. 704 of 2005

(Arising out of order-in-original No. 06/2005 dated 18.03.2005 passed by the Commissioner of Customs & Central Excise), Jaipur-I)

DATE OF HEARING : 03.09.2008
DATE OF DECISION : 03.09.2008

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE S.N. JHA, PRESIDENT
HON'BLE MR. M. VEERAIYAN, MEMBER (T)

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure)Rules, 1982 ?.	Yes
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ?	Yes
3.	Whether their Lordships wish to see the fair copy of the Order ?	Seen
4.	Whether Order is to be circulated to the Departmental Authorities?	Yes

M/s Modern Suiting Ltd. .... **Appellant**
(Rep by Sh. K.K. Anand, Adv.)

VERSUS

CC, Jaipur-I .... **Respondent**
(Rep. by Sh. Fateh Singh, DR)

CORAM : HON'BLE MR. JUSTICE S.N. JHA, PRESIDENT
HON'BLE MR. M. VEERAIYAN, MEMBER (T)

Final ORDER NO. C/349/08

PER M. VEERAIYAN :

This is an appeal against the order of the Commissioner No. 06/2005 dated 18.03.2005 which was passed in *de novo* proceedings in pursuance of the Tribunal's order no. A/723/03-NB-C dated 03.12.2003.

2. Heard both sides. The relevant facts in brief are as follows:

(a) The appellant had obtained EPCG licences dated 06.09.1995 and 30.01.1996 for import of second hand looms on payment of concessional rate of duty of 10% in terms of notification no. 110/95-Cus.

(b) They imported the goods in 1996 and warehoused the same in the public bonded warehouse run by C.W.C.

(c) They changed their mind on clearing the warehoused goods under EPCG licences and applied to the DGFT authority and Development Commissioner for treating the goods already imported under EPCG Scheme as goods imported under 100% EOU Scheme. (The import of goods under 100% EOU scheme is fully exempt from Customs Duty).

(d) The Ministry of Industry granted permission for setting up of the 100% EOU by letter dated 07.08.1998. The Development Commissioner also gave permission vide letter dated 31.08.1998;

They also applied for the cancellation of EPCG licences issued by the DGFT authority and the same were cancelled in November, 1998.

(e) Meanwhile, the warehousing periods for the imported goods lodged in the warehouse expired on 20.10.1997 and 23.10.1997, even though the communication rejecting the request for further extension of warehousing period was issued vide letter dated 20.02.1998.

(f) A show cause notice dated 12.03.1999 was issued on the ground that the goods imported under EPCG Scheme under Notification No. 110/95-Cus and lodged in the warehouse have not been cleared from the warehouse even after the expiry of the warehousing period and that the condition of import under EPCG was not fulfilled. The original authority confirmed the duty, besides confiscating the goods.

(g) When the matter came before the Tribunal, the Tribunal vide order dated 03.12.2003 set aside the order of the original authority and remanded the matter to consider the request in the light of the instruction of the Board contained in Circular No. 75/99-Cus dated 10.11.1999. It was also mentioned therein that the said Board's Circular should be meaningfully interpreted and that the authority below cannot be allowed to circumvent the Board's Circular by saying that the warehousing period in respect of the goods have already expired.

(h) In pursuance of the direction of the Tribunal dated 01.12.2003, the matter has been re-considered and by the impugned order, the Commissioner ordered confiscation of 27 looms valued at Rs. 5,51,37,779/- under Section 111(j) of the Customs Act, but allowed redemption on payment of fine of Rs. 50 lacs within three months from the date of receipt of the said order. He also directed that if the goods were redeemed appropriate duties and other charges would be payable in respect of the said goods.

3. Learned advocate after narrating the history of the case took us through the relevant documents and made the following submissions :

(a) After permission was obtained for converting the import from EPCG Scheme to 100% EOU Scheme, they wrote letters seeking permission for manufacture of the goods under bond under Section 65 using the imported goods. Instead of granting the said permission, they were issued with a show cause notice demanding duty on the ground that the warehousing period was over and the conditions of EPCG Scheme were not fulfilled.

(b) When the permission had been granted by the competent authorities permitting conversion from EPCG Scheme to 100% EOU Scheme, issuance of show cause notice for violation of conditions of EPCG Scheme was not proper.

(c) The request for extension of warehousing period has been declined belatedly making them unable to operate the 100% EOU within the stipulated time frame

(d) The confiscation of the goods under Section 111(j) is not appropriate in the facts of the present case.

(e) The Board's Circular dated 10.11.1999 should have been interpreted favourably and the goods should have been permitted to be cleared by them.

(f) To the specific queries raised by the Bench, he conceded that the EPCG licenses stand cancelled; the time frame for operationalising 100% EOU, which was three years, stands expired long back;

the normal warehousing period and the extension granted by the Commissioner/Chief Commissioner expired in October, 1997.

(g) He submitted that there was no justification for confiscating the goods and imposing redemption fine; he sought release of the goods.

4. Learned DR made the following submissions :

(a) Warehousing of the goods is subject to the provisions of the Customs Act, and extension of warehousing period can be granted only subject to the fulfillment of the conditions stipulated therein and particularly with regard to conditions of the goods as to whether they susceptible to deterioration or not and whether there is justification for delay in clearance of the warehoused.

(b) On expiry of the warehousing period, the goods were deemed to have been cleared unauthorisedly from the warehouse and the duty shall be payable in terms of Section 72(1)(b) of the Customs Act.

(c) In the facts of the case, confiscation of the goods was justified.

5. We have carefully considered the submission from both sides. At the outset, we note that the goods were imported in 1996 and at the time of import itself they were only second hand goods.

While the litigation was going on, the goods, imported using precious foreign exchange, were lying unused in the warehouse. However, learned advocate claims that the machines still have residuary life. We regret to note that the appellant has not acted with any sense of urgency by filing the bill of entry for clearance of the warehoused goods, even after getting the permission for conversion from EPCG Scheme to 100% EOU Scheme. Suffice it to note that, at this point of time, the appellant is not entitled to clear the imported goods neither in terms of EPCG LIcences which stand cancelled nor under 100% EOU Scheme as the validity of the permission granted stands expired long time back and that the period for which the goods were permitted to be warehoused, expired way back in October, 1997. However, taking into account the submissions that the goods still have some residuary life left, and considering that the goods have been imported using precious foreign exchange, we feel that the goods should be permitted to be cleared by the importer and put to productive use.

6. While we hold that the goods are not ~~be~~ permissible to be cleared under 100% EOU Scheme or EPCG Scheme, we also hold that this is not a case for invoking the provisions of Section 111(j) or any other clause of Section 111 and therefore confiscation is not justified and, therefore, the redemption fine imposed is set aside.

7. We may also note that this will be a case where Section 72(1)(b) will be rightly attracted as the warehoused goods have not been removed from the warehouse at the expiration of the period permitted under Section 61. The customs duty shall be payable at the

rate applicable on the date of expiry of the warehousing period. The appellant is also required to pay the rents and other charges to the concerned persons as held by the Commissioner in his impugned order. We also hold that even though Section 72 refers, in addition to demand of duty, payment of penalties , the imposition of penalty may not be attracted in the present case.

8. In the result, the appeal is, therefore, disposed of upholding the demand of duty and interest as applicable and other charges. However, the redemption fine is set aside. The appellant shall clear the goods within three months from the date of receipt of this order.

(Dictated and pronounced in the open Court on the 3rd day of September, 2008)

(JUSTICE S.N. JHA)
PRESIDENT

(M. VEERAIYAN)
MEMBER (TECHNICAL)

Golay