TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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

Appeal No. C/273 /2006 - CU[DB]

Date 20/01/2009

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

To :
M/S BULK PACK EXPORTS LTD.
FAIRDEAL BUILDING, 2, A.B.ROAD,
GEETA BHAWAN SQUARE, INDORE

M/S BULK PACK EXPORTS LTD. Appellant

Vs

THE COMMISSIONER CENTRAL EXCISE Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/21 2009 CU[DB]** dated 14.01.09 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 CENTRAL EXCISE

HQRS., MANIK BAGH PALACE, INDORE
2. Adv. / Consult
MR.HEMANT BAJAJ, ADV., A-5 (BASEMENT)
LAJAPAT NAGAR-III, N.D. 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-15
15 Office Copy
16 Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Customs Appeal No. 273 of 2006

[Arising out of Order-in-Original No. 01/COMMR/IND/2006 CUS dated 23.3.2006 passed by Commissioner of Customs & Central Excise, Indore]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K.Das, Member (Judicial)

---

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
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. Bulk Pack Exports Ltd. — Appellant

Vs.

Commissioner of Customs
Central Excise, Indore — Respondent

Appearance:

Mr. K.K. Anand, Advocate for the Appellants
Mr. Sunil Kumar, DR for the Respondent

CORAM:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K.Das, Member (Judicial)

Date of Hearing /Decision: 14.1.2009

Final **ORDER NO. C/21/09**

Per M. Veeraiyan (for the Bench):

This is an appeal against the order of the Commissioner No. 01/COMMR/IND/2006 CUS dated 23.3.2006.

2. Heard both sides.

3. Relevant facts, in brief, are as follows:

a) The appellant imported a consignment of polyethylene granules weighing 47.250 MT and declared them as LDPE and produced 3 DEEC licence to cover the said quantity of LDPE and claimed the benefit of nil rate of duty under exemption notification No. 93/04-Cus dated 10.9.04.

b) The examination revealed that the goods were not LDPE but were LLDPE. At the time of investigation, it was submitted on behalf of the appellant that the senior officer who was looking after the working export and import left the job and the new person was not well-versed with import-export, and he filed the bill of entry and submitted those licenses.

c) The explanation that they imported both LDPE and LLDPE and they got possibly mixed up, was also not found acceptable to the Commissioner as both the consignments covered in five containers were found to be LLDPE granules only. Commissioner ordered confiscation of the goods valued about Rs. 26 lakh but allowed the same to be redeemed on payment of fine of Rs.2,50,000/-; he also imposed penalty of Rs.1,50,000/-. He also held that the exemption was not available and accordingly, demanded duty of Rs.7,46,619/-.

4. Learned advocate for the appellants submits that they have been issued licences for import of both LLDPE and LDPE and both fall under same tariff sub-heading. Both the materials are inter-changeably usable for

the intended purpose. They have nothing to gain by mis-declaring the variety which was imported. It was only a bonafide mistake. Therefore, confiscation and imposition of penalties are not warranted. The three licences mentioned in the bill of entry are not covering the goods which are imported. However, at that time, they produced licences valid for import covering 24.5 MT of LLDPE which was also not accepted. Therefore, he seeks that the consignment may be released without demanding duty on production of licences which are currently valid.

5. Learned DR submits that the appellants' claim that it was a case of bonafide mistake cannot be accepted. They have not produced any evidence that they placed orders for specified quantities of LDPE and LLDPE. The invoices of the manufacturer specifies the grade in a coded form. They have produced invalid licences and also mis-declared the goods. Therefore, he seeks upholding of the order of the Commissioner.

6. We have carefully considered the submissions. It is true that they have been permitted import of specified quantities of LDPE and LLDPE under various licences issued to them. The granules of LDPE and LLDPE fall under the same chapter sub-heading. However, one could not be imported in place of others as the licences have been issued separately for each category to the extent of specified quantity for the purpose of manufacture of goods to be exported. They submitted that they had other valid licences, for the quantity imported by them but have not been produced before Customs for clearing these consignments, and the submission may not be relevant at this stage as these licences are not valid as of now. We find that the applicant has not been able to produce any evidence to show that they actually placed orders for LDPE and that there was no wanton mis-declaration. They failed to produce any evidence to show that they placed order for such

quantity of goods specified and for the specific value. It is also noted that the trade differentiates between the LDPE and LLDPE. Under these circumstances, we hold that there is mis-declaration of goods imported and the benefit of exemption is not applicable as held by the Commissioner. Therefore, the goods are liable to confiscation and also they are liable for penalty. However, in the overall facts and circumstances of the case, we feel that some leniency can be shown in the quantum of fine and penalty imposed. However, the duty involved shall become payable unless the appellant is in a position to produce currently valid licences for covering duty free import of imported goods.

7. In the light of the above, the appeal is disposed of as follows:-

(a) The confiscation of the goods is upheld. However, the redemption fine is reduced from Rs.2.5 lakhs to Rs. 1,00,000/- (Rupees One lakh only).

(b) The penalty is reduced from Rs. 1,50,000/- to Rs. 75,000/- (Rupees Seventy-five thousand only).

(c) Duty of Rs.7,46,619/- shall be payable unless any licence valid for duty free import under DEEC scheme ~~is~~ applicable as of now is produced.

(Dictated & Pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

ss