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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/617-18 /2006 - CU[DB] Date 13/08/2009

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

To :
M/S ROLLATAINERS LTD
13/6, MATHURA ROAD,
FARIDABAD, HARYANA 121003

M/S ROLLATAINERS LTD Appellant
Vs
THE COMMISSIONER OF CUSTOMS, NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/354-355/ 2009 CU[DB] dated 29.07.09 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
   COMMISSIONER OF CUSTOMS,
   ICD, TKD, NEW DELHI
2. Adv. / Consult
   MR.V. LAXMIKUMARAN, ADV., B-6/10,
   SAFDARJUNG ENCLAVE, NEW DELHI-110029
3. S.D.R
4. J.C.D.R.
5. Bar association. CESTAT. New Delhi
6. Director Publications. Customs. Excise. I.P. Estate. New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

C/617-18/05

(Arising out of Order-in-Original No.26/05 dt.11.4.05 passed by Commissioner of Customs, New Delhi)

M/s. Rollatainers Ltd. Appellant

Versus

CC, New Delhi Respondent

Appearance
Sh. B.L.Narsimhan, Adv. For Appellant

Sh. Vijay Kumar, DR for Respondent

Coram: Hon'ble Mr. D.N.PANDA, JUDICIAL MEMBER
Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Grkal Date of decision: 14.7.09
Order No. C/354-355/09

Per D.N.Panda:

Ld. Counsel Shri B.L.Narsimhan submits that advance license was given to this appellant on three occasions i.e. on 29.7.97, 8.8.97 and 8.10.97 for importing polyester films. This was in response to the application of the appellant made on 31.3.97. The appellant manufactured printed cartons made of paper board, ink, polyester film/BOPP and film LDPE for packing of food products like tea, milk products, ghee etc. The appellant used BOPP films in the printed cartons instead of using polyester film and such deviation was considered by DGFT authorities n ot gravious as per page 97 of the appeal folder. The authorities examined the issue as to whether the license issued for importing polyester films shall be same as BOPP film used by the appellant. The committee examined the technicalities and held that these are two alternate raw-materials involving the same waste level in the lamination industries and their tariff structure was also the same. Therefore, the licencing authority held that the import having been completed, regularization of the advance licence is to be made. This decision was made on 9.4.03 at page 97 of appeal folder as relied by Appellant. But Revenue's grievance was that there was deviation in the use for which there was breach of Advance License and liable to consequence of adjudication made by the impugned order flowing from proposal in SCN as para 22 of order-in-original.

2. After the decision was made by the DGFT Authorities on 9.4.03 as aforesaid, Customs Authorities issued a SCN on 10.10.03. The appellant has been charged that there was a violation of the advance licence terms. By the time the charge was made by Customs Authority, DGFT had withdrawn the show cause notice against the assessee under Section 14 read with Section 11(2) of Foreign Trade(Development & Regulation)Act,1992 in terms of page 97 to 99 that has emerged. Therefore, the appellant's claim is that there was no violation of the terms of advance licence and such licences were

transferrable. Accordingly the licences were transferred to M/s. R.T.Packaging Ltd. and M/s. Super Cassettes Inds. Ltd. Therefore, in absence of any violation found out by licencing authority, the exercise made by the Customs authorities is futile. The appellant should succeed accordingly.

3. Shri B.L.Narsimhan, Ld. Counsel also urges that when the appellant was not importer of the goods, there shall be no liability against the importer.

4. Ld. DR Shri Vijay Kumar argued that the appellant was required to export only polyester films. The licensing requirement was for manufacture of cartons using polyester filmswithout being those manufactured by BOPP films. When the Customs noticed that the appellant had not fulfilled the requirement of advance licence issued in the year 1997, the appellant was not the owner of the licence to enjoy the benefit of transferring the same. Therefore, the benefit of importation was neither available to the appellant nor also to the transferees of the advance licences. The raw-material i.e. BOPP films and polyester films are materially and technically different for which there was a standard input/output norm exists for printing. The SION norms do not specify for printing of the carton using BOPP film. Therefore, the proceedings initiated against the appellant for use of the advance licence was proper. The notification No.31/97-Cus dt.1.4.97 requires that the goods exported shall be the same as goods imported which is the intention of the advance licence.

5. Heard both sides and perused the records.

6. It has been noticed that the proceeding was initiated by the Customs [illegible] only after the DGFT has taken decision on 9.4.03 regularising the breach of advance licence. That authority found that the import having been completed regularization of the advance licence was called for. There is no dispute that BOPP films were used by the appellant in the cartons manufactured and exported. There is also no dispute that polyester films were intended to be imported in the advance licence. It is also a fact that the advance licence procured by the appellant was transferred to R.T.Packaging and M/s. Super Cassettes Ltd. who became beneficiary of the advance licence upon transfer by the appellant. It is also on record that advance licence which was basis of dispute no more continued to be so by the regularization of breach made by the DGFT on 9.4.03. This decision of DGFT when exonerates the appellant, there is nothing further on record to dilate the matter further. Accordingly allegation in show cause notice became mere academic issue for which the appellant sshould succeed and both the appeals are allowed.

Order dictated in the open Court.

(D.N.Panda)
Judicial Member

(Rakesh Kumar)
Member Technical

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