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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/530 /2006,624 /2006 - CU[DB] Date 01/10/2010

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

To :
M/S SIDDHACHALAM EXPORTS P LTD
WZ-179, MEENAKSHI GARDEN,SHIVAJI MARG,
TILAK NAGAR,NEW DELHI

M/S SIDDHACHALAM EXPORTS P LTD Appellant

Vs

C.C.E.FARIDABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/148-149/ 2010 CU[DB]** dated 28.09.2010 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
   C.C.E.FARIDABAD
   NEW CGO COMPLEX,NH-IV,FARIDABAD
2. Adv. / Consult
   MR.BIPIN GARG, B-1/1289,A
   -VASANT KUNJ, NEW DELHI
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. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file
16. SANJEEV JAIN, WZ-179, MEENAKSHI GARDEN, SHIVAJI MARG, TILAK NAGAR, N. DELHI.

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.IV

C /Appeal No.530/2006

(Arising out of order in original No.6/KKJ/Adjn/2006-07 dated 26/29.5.06 passed by the Commissioner of Central Excise, Faridabad)

Date of Hearing: 21.9.2010

For approval and signature:

Hon'ble Shri M.V. Ravindran, Member (Judicial)
Hon'ble Shri M. Veeraiyan, Member (Technical)

1. Whether Press Reporters may be allowed to see Under 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 Siddhachalam Exports (P) Ltd — Appellants

Vs

CCE, Faridabad — Respondent

C/A No. 624/2006

Shri Sanjeev Jain — Appelalnts

Vs

CCE, Faridabad — Respondent

Appeared for the Appellant: Shri Bipin Garg, Advocate
Appeared for the Respondent: Shri S.R. meena, SDR

Coram: **Hon'ble Shri M.V. Ravindran, Member (Judicial)**
Hon'ble Shri M. Veeraiyan, Member (Technical)

Final ORDER No. C/148-149/10

Per M. Veeraiyan:

Appeal No. 530/2006 is by M/s Sidhachalam Exports against the order of the Commissioner dated 26.5.2006 by which he ordered confiscation of the goods with option to redeem and imposition of penalty. Appeal No. 624/2006 is by Shri Saneev Jain, Director of the appellant company against the penalty imposed on him by the same impugned order.

2. Heard both sides.

3. The relevant facts in brief are as follows:-

a) The appellant company filed two Shipping Bills both dated 3.4.2003 for export of 9900 pieces of Woven trousers valued at Rs.500/- per piece. The total declared FOB value of the goods was Rs. 49,50,000/- with a claim of draw back of Rs. 5,94,000/- The appellant company also filed four shipping Bills all dated 3.4.2003 for export of 6120 kgs of articles of Nickel Welding Electrodes with declared value of Rs. 400/- per kg. The total declared FOB value was Rs.24,48,000/- with a claim of drawback of Rs. 3,42,720/-. Both these consignments were consigned to a buyer in Russia.

b) The officers, as follow up of case against the appellant company in Gurgaon, Haryana subjected the above consignment for closer examination. The consignments have already been examined by the officers. During re-examination, they found that instead of declared articles of Nickel Welding Electrodes, the consignments covered by four shipping bills were found to be Iron Electrodes. The examination of the consignment of RMG, according to the investigation, revealed that the consignments were mis-declared in description and the value was highly inflated with a view to claim excess drawback.

c) During search of the premises of the appellant company, several incriminating documents were found and seized. In addition, they found 96 rubber stamps of various firms and suppliers from whom the appellant company have shown purchases. It also contained four rubber stamps of various customs officers.

d) On the basis of investigation, show cause notice was issued alleging that the value of Denim Jean pants which were declared as Woven trousers was only Rs.6,93,000/- as against the declared value of Rs. 49,50,000/-. The value of Iron Electrodes which were mis-declared as Nickel Welding Electrodes was Rs.1,53,000/- as against the declared value of Rs. 24,48,000/-. Show cause notice proposed confiscation of the goods for alleged mis-declaration of description and value and proposed penalties on the appellant company and the appellant Director.

e) The original authority confiscated the 9900 pieces of Denim Jean Pants but allowed the same to be redeemed on payment of fine of Rs. 5 lakhs; he confiscated 6120 kgs of Iron Welding Electrodes but allowed the same to be redeemed on redemption fine of Rs.1,20,000/- He also imposed penalty of Rs. 5 lakhs on the appellant company under Section 114 of the Customs Act and he also imposed penalty of Rs. 2 lakhs on the appellant Director.

4. The learned Advocate for the appellants assailed the impugned order on various grounds. Important grounds raised by him are as follows:-

a) There is violation of principles of natural justice in not granting cross examination of Panch witnesses though the appellants have specifically requested for such cross examination.

b) As regards the alleged mis-declaration of description of readymade garments as Woven Trousers and not as Denim Jean Pants, he submits that there is no mis-declartion in as much as, the said Denim Jean Pants are also Woven Trousers. He also submits that reliance placed on the ~~information~~ opinion taken from one Sanjay Kumar of M/s Vijay Enterprises to come to a conclusion that the prices of each piece of Pant is only R. 70/- is not at all justified. After taking us through the records of cross examination, he submits that the said so called expert has been in the business as Vijay Enterprises only for about one month.

c) Regarding the export of Iron Welding Electrodes instead of Nickel Electrodes, he submits that it was a case of mistaken loading of the consignments by their employees. He submits that on 4.4.2003 itself, they came to know about the human error and accordingly addressed a letter to the Assistant Commissioner and also prepared an affidavit to this effect. The said documents according to the learned Advocate, were delivered to the officers on the same date i.e. 4.4.2003. In other words, though there is mistake in the description in the shipping bills, the said mistake is not a deliberate one.

d) Regarding admission statement of the appellant Director dated 18.4.2003, he submits that the same were as dictated by the officers and not voluntarily given. The said statement was retracted at the earliest on 19.4.2003 from the jail to the concerned authorities. The statement which stands retracted should not be relied upon and the confiscation and penalties should be set aside.

e) He also submits that the recovery of Rubber stamps of various parties including Customs officers are not directly relevant to the present case. He also submits that on cross examination of the Inspector Shri N.K. Soni, it has been admitted by him that the letter dated 4.4.2003 and the affidavit were on record of the department.

f) He also submits that the goods are still lying with the department and if they are examined now, it would be evident that even the present value will be much higher than the Rs.70/- per piece which was the price fixed by the so called expert.

5. The learned SDR strongly defends the order of the Commissioner and makes the following submissions:-

a) The appellant company was found to have imported used clothes and segregated them and labelled them as if manufactured in India. The appellants were found to have in their custody rubber stamps of various suppliers, persons who were dealing with them including those of Customs officers.

b) Regarding readymade garments, the appellant company has given a wrong description as Woven trousers very well knowing that they are Denim Jean pants. The value declared by them was Rs.500/- per piece. Shri Sanjay Kumar of Vijay Enterprises was in the textile business for about 25 years. The cross examination has not demolished this fact. Therefore, the opinion given by Shri Sanjay Kumar that the value is only Rs.70/- per piece has been rightly relied upon by the Department.

c) The claim that the appellant suo-moto brought to the notice of the Department about alleged human error in respect of loading of iron welding electrodes in place of Nickel electrodes is an after thought. The said letter was prepared only after the goods have been examined and ~~lot~~ let export order given and after drawal of representative samples by the department. They have not produced any acknowledgement to show that the same were handed over to the authorities on 4.4.2003. He fairly concedes that the letter has come on record on 16.4.2003 as recorded by the Commissioner in the impugned order which mentions that the shipping bills were sought to be cancelled as the buyer has cancelled the order. When a detailed statement was given by the appellant director on 18.4.2003, he has not mentioned anything about the letter dated 4.4.2003. The statement has been given with reference to the various documents recovered from their premises. The retraction dated 19.4.2003 is a vague retraction which does not refer to any of the admitted facts in the statement dated 18.4.2003 and therefore, the retraction should not be relied upon.

d) In the facts and circumstances of the case, the appellants have failed to reveal the source of procurement and documentary evidence supporting the price declared by them in the shipping bills.

e) He also submits that the entire investigation was commenced on ~~the~~ prior information

f) He also relies on the following decisions:-

1. Om Prakash Bhatia Vs CC Delhi
   2003 (155) ELT 423 (SC)

Penguin (MFT) International Vs CC Cochin
1988 (35) ELT 388 (Trib)

B.R. Export Vs CC New Delhi
2009 (239) ELT 208 (Trib Del)

6. In rejoinder, the learned Advocate submits that the case made against the appellant company in Gurgaon was decided in their favour by the original authority but reversed by the Tribunal and the matter is before the Hon'ble Supreme Court. He also submits that the decisions relied upon by the department are not relevant to the facts of the present case.

7.1 We have carefully considered the submissions from both sides and perused the record.

7.2 We find that the investigation in respect of consignments of readymade garments and Welding Electrodes exported by the appellant company started pursuant to investigation commenced in Gurgaon. (We are not concerned with the said proceedings in the present proceedings.) It is noticed that the documents and rubber stamps of various parties including those of Customs officer were seized in the presence of the representative of the appellant company and independent witnesses. The appellants are not disputing the seizure of the documents and of the garments. Under these circumstances, the plea for cross examination of panch witness was not justified. Therefore, we do not find any violation of principles of natural justice as contended by the learned Advocate.

7.3 No valid reasons have been given for presence of rubber stamps specially those of the customs officers. We are not able to envisage any honourable purpose behind the existence of these rubber stamps. It is also undisputed fact that the appellants have imported garments which were being segregated and labeled as if made in India. Though the same is not directly relevant to the impugned consignments, these are circumstantial evidences which cannot be ignored.

7.4 The Department has alleged that there is a mis-declaration in respect of readymade garments in as much as, the appellants have declared the same as Woven trousers instead of Denim Jean pants. It is not disputed that Denim Jean Pants are also woven trousers. Therefore, we do not agree with the submissions of the department that there is mis-declaratin of description of the readymade garments exported by the appellants. At the most, it is a case of incomplete description.

7.5 The Department also, relying on the opinion of Shri Sanjay Kumar of Vijay Enterprises adopted the value as Rs.70/- per piece as against Rs. 500/- declared by the appellant. The cross examination of the said Shri Sanjay Kumar has revealed that he was running the said Vijay Enterprises only for one month. However, it has not been disputed that he was in garments business for about 25 years and therefore, we are not able to question his knowledge about the trade. When the department has relied on several evidences like existence of imported old garments, rubber stamps and the opinion of Shri Sanjay Kumar, the burden to prove the genuineness of the prices declared by the appellant in the export documents shifts to the appellants. The appellants are undisputedly merchant exporter. That being the case, we fail to understand why the purchase documents could not have been produced by the appellants before the authorities during investigation or during adjudication. The submission of the learned

Advocate that the invoices and other documents were destroyed due to demolition undertaken by DMRC is not substantiated and the claim is not convincing to us. The appellants have chosen to justify the declared prices by producing quotations. As a merchant exporter who purchased the goods from various parties, they should have produced direct evidence by producing the purchase invoices which they have not done. Therefore, we are not convinced about the genuineness of the price for the consignments. In other words, the price declared by the appellants is not substantiated. We therefore, hold that there is mis-declaration of value of the export consignments of readymade garments. At the same time, the value recommended by Shri Sanjeev Kumar has to be treated only as an approximate one. The actual price could be anything in between.

7.6 Coming to the admitted export of Iron Welding Electrodes in the guise of Nickel Welding Electrodes, it is not in dispute that in the shipping bill, the appellants have declared the consignments as nickel electrodes and what was found was iron Electrodes. According to the department it was a deliberate attempt to mis-declare the value with a view to claim higher drawback. According to the appellant, it was a case of mistake in loading due to the human error. The record indicated that the purchase prices of Welding Electrodes were at the rate of Rs.23 per kg whereas the declared value was Rs. 400/- per kg which entitled them to claim drawback of Rs. 56 per kg. We are not convinced that there could have been human error in loading consignments covered by four different shipping bills. Further we find that the goods were re-examined after the shipping bills have been processed and just before the goods were loaded for export.

7.7 The claim that the appellant had on their own detected the error on 4.4.2003 and promptly informed the authorities is not supported by a letter of acknowledgment. However, we find that the order of the Commissioner states that on 16.4.2003, a letter of withdrawal was given on the ground that order has been cancelled by the overseas buyer. This finding is contrary to the claim of the appellant that on 4.4.2003, they have given a letter claiming that there was wrong loading due to the human error. In fact, we find that the appellant director has given a detailed confessional statement on 18.4.2003 where he has not at all mentioned about the letter dated 4.4.2003 and the affidavit dated 4.4.2003. Therefore, we hold that the rejection of these documents by the Commissioner was justified.

7.8 Coming to the retraction letter dated 19.4.2003 which was addressed to the Chief Metropolitan Magistrate, we notice that the appellant director was arrested on 18.4.2003 and was remanded on the same date before the Magistrate. We were not shown that there was any complaint of ill-treatment made to the Magistrate. The retraction letter is vague as it claims that he was forced to sign some documents and to make some statements recorded by the customs officers. On perusal of the statement given on 18.4.2003, we find many details which could be known only to the Director and explaining the entries of documents recorded from the premises. In these circumstances, the letter addressed on 19.4.2003 to the Chief Judicial Magistrate cannot be taken as retraction of the said statement.

7.9 In view of the above, we also find that the appellant director was totally aware of the happening of the company and that he was involved in mis-declaration of iron electrodes as nickel electrodes with a view to claim higher drawback than what was eligible. In view of the above, we hold that the order of confiscation of the impugned goods is justified. Penalties are also warranted on the appellants. We also take note of the fact that readymade garments were seized in 2003 and the same is lying for several years. Considering the entire facts and circumstances of the case, some leniency is justified in the quantum of redemption fine and penalty.

8. The appeals are disposed of as follows:-

a) While upholding the confiscation of 9900 pieces of Denim Jean pants, we reduce the redemption fine from Rs. 5 lakhs to Rs. 2 lakhs.

b) While upholding the confiscation of 6120 kgs of iron electrodes, we reduce the redemption fine from Rs.1,20,000/-to Rs. 25,000/-

c) The penalty imposed on M/s Siddachalam Export Pvt Ltd is reduced from Rs. 5 lakhs to Rs. 2 lakhs.

d) Penalty imposed on Shri Sanjeev Jain, Director is reduced from Rs. 2 lakhs to Rs. 50,000/-.

(M.V. RAVINDRAN)
Judicial.Member

(M. VEERAIYAN)
Technical Member

MPS*