

GRAM : CEGCANAL

REGISTERED/A.D

THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, New Delhi - 110066.

BENCH NB(SM)

Appeal No. E/1043/2000-NB(SM)

Dated : 5-1-2001.

CEGAT
NEW DELHI
To,

M/s Banswara Syntex Ltd.,
Dohad Road, Inl. Area,
Banswara (Raj)

In the matter of :

M/s Banswara Syntex Ltd., Appellant
vs.
CCE Jaipur Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/27/2001/NB(SM)
Dated : 8-11-2000 passed by the Tribunal under Section 35-C(1) of Central Excise & Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

Copy to :

Asstt. Registrar

1. ~~SM~~ CCE Jaipur
2. CCE/EE/(Appeal) Jaipur
3. Chief Commissioner of Central Excise / Customs. Jaipur
4. Adv. / Consult. Shri K.K. Anand, Adv.
A-5, Basement, Lajpat nagar-II,
New Delhi-24.
5. S.D.R
6. JCDR
7. Bar Association, CEGAT, New Delhi
8. Library, CEGAT, New Delhi
9. Director (Review), C.B.E.C. North Block, New Delhi
10. Guard File.
11. M/s Deeparchic Publications, M-93, Marg-46, Saket, New Delhi.
12. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah Marg, opp. Sachdeva P.T. College of Defence Colony, New Delhi-110003
13. M/s Lex Site Com. Ltd., Mumbai
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Asstt. Registrar

Customs Excise & Gold(Control)Appellate Tribunal

Northern Bench(Single Member)

E/1043/2000-NB

(Arising out of Order-in-Appeal No.273(KDT)CE/JPR-I/99 dt.28.10.99 passed by the Commissioner(Appeals), Jaipur)

M/s. Banswara Syntex Ltd.

Appellant
(Rep. by Shri K.K.Anand,Adv.)

vs

CCE, Jaipur

Respondent
(Rep. by Shri S.C.Pushkar,JDR)

FINAL Order No. A/27/00/NB ^{CEP/M} 8.11.2000

Per G.R.Sharma:

The appellants have filed this appeal against the findings of the Ld. Commissioner(Appeals) confiscating the yarn found at the time of the visit of the officers and imposing penalty.

2. The facts of the case in brief are that Central Excise Officers on a visit to the factory premises of the appellant found yarn kept outside the bonded store room. Shri R.K.Agarwal, Sales Manager of the appellant's firm submitted that the appellants are cleared ^{ing} yarn not only in single yarn form but also in double yarn form. He further deposed that the yarn found in a place outside the BSR was meant for doubling. He also stated that they had not sufficient space to store the yarn and because of the paucity of the space, they are supposed to ^{stock} stop the yarn outside the bonded store room. He submitted that the yarn ^{is} are being recorded in the RG.I Register only at the time of this clearance. Shri Agarwal in his statement further stated that the yarn kept outside the BSR was not in ready marketable stage in-as-much as some of it was still in plastic ^{bags} cones. In reply to the SCN it was contended by the appellant that yarn in single ^{ply} form is cleared only in paper ^{and} cones and that the yarn found outside the BSR was in the plastic cones. After considering the various submissions made by the appellants and the evidence on record, the Ld. Commissioner confiscated yarn and imposed the penalty.

3. Arguing the case for the appellant Shri K.K.Anand, Ld. Counsel submits that in the instant case the goods at the time of seizure were not in ready marketable position. He submits that this position was confirmed by the Sales Manager of the Company and further explained in reply to the SCN. He submits that it is well settled position in law by various judgments of this Tribunal also that unless the goods are in marketable condition, they could not be termed as ready for clandestine removal. He submits that this Tribunal in the case of Bhilai Conductors Pvt. Ltd. reported in 2000(91)ECR.569 held that in case there is no mensrea i.e. the intention to clandestinal remove the goods, the goods cannot be confiscated. Ld. Counsel submits that all the facts of the case were plainly stated by the Sales Manager of the Company that there was paucity of the space that there was lack of information available to the staff that some more space could be included in the BSR which resulted in keeping the goods outside the BSR. Ld. Counsel referred to Trade Notice No.80/84 dt.28.12.84 issued by Collectorate Chandigarh in which it was clarified that yarn is to be entered in the R.G.I account as soon as it has attained the form in which it is to be cleared from the factory. He submits that when this clarification is read in conjunction with the statement of the Sales Officer of the Company and the submissions in reply to the SCN it will be cleared that yarn in dispute was to be doubled before clearance and since the yarn found was in single form it did not require to be entered in R.G.I Register in terms of this clarification given in the Trade Notice. Ld. Counsel, therefore, submitted that there was no case either for confiscation of the yarn or for imposition of penalty and therefore, prayed that the appeal may be allowed.

4. Shri S.C. Pushkar^{an} Ld. DR submits that in the instant case the appellant was clearing yarn not only in the double form but also sometimes in the single yarn form. He submits that in this view of the matter ~~that~~ the entry of the yarn in the registers became pertinent and should have been done by the appellant. He submits that since the yarn was not entered in the statutory records, therefore, penalty in the case was warranted.

5. On confiscation Ld. DR submits that since the yarn was not entered in the statutory records, confiscation was also sustainable in law. He, therefore, prayed that the appeal may be rejected.

6. I have heard the arguments adduced by both the sides. The question for determination before me is whether confiscation of the yarn is sustainable in law. I find that the Sales Manager of the Company in his statement recorded under Section 14 of the Central Excise Act had deposed that the yarn in dispute was meant for doubling. I find that there was a Trade Notice issued by the Chandigarh Collectorate during the material period clarifying that the R.G.I stage the yarn was cleared. According^{ly} ~~to~~ ^{to} the contention of the appellant in reply to the SCN and the statement of the Sales Officer of the Company showed that this yarn was to be cleared after doubling. Looking to this aspect I find that confiscation of the yarn is not sustainable in law. It is further stated that the yarn was not in readily marketable condition at the time of seizure.

7. On the question of imposition of penalty the fact remains that the yarn was not entered into the statutory record. Needless to say that the duty on yarn is required to be paid on single ^{ply} yarn form. Even if the yarn was not in completely marketable condition, it should have been recorded in one of the columns meant for semi finished goods in R.G.I register since it is not there, therefore, penalty was warranted and sustainable in law. In so far as the quantum of

penalty is concerned, I find that it is nominal in view of the fact that the value of the goods is quite substantial, therefore, I would not like to interfere with the imposition and quantum of penalty.

8. The impugned order is, therefore, modified to the extent stated above and the appeal is disposed of accordingly.

Order dictated in the open Court.

(G.R.Sharma)
Member Technical

Dt.3.1.2001
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