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

Customs Appeal No. 50915 of 2015

[Arising out of Order-In-Appeal No. 593/2014 dated 25.11.2014 passed by Commissioner Customs (Appeals), New Delhi]

M/s. Garg Inox Limited **Appellant**

Vs.

Commissioner of Customs **Respondent**
New Delhi

Appearance:

Shri Vijender Rathee, Advocate for the Appellants
Shri Govind Dixit, AR for the Respondent

CORAM:

Hon'ble Ms Archana Wadhwa, Member (Judicial)
Hon'ble Mr. V Padmanabhan, Member (Technical)

Date of Hearing/ Decision: 15.3.2017

FINAL ORDER NO .52524 /2017

Per Archana Wadhwa :

The challenge in the present appeal is only to confiscation of the goods with option to redeem the same on payment of Redemption Fine of Rs. 5 lakh and personal penalty of Rs.1.25 lakh imposed under section 112 (A)(ii) of the Customs Act, 1962.

2. After hearing both sides, we find that the appellant imported certain parts and machinery of the export goods and claimed the benefit of notification No. 104/2009, under Status Holder Incentive Scrip Scheme. However, it was found that said notification issued under the scheme is only for various capital goods. However, inasmuch as goods imported by the appellant were not covered by the said scheme, the Revenue was of the view that benefit of notification is not available.

3. Learned advocate appearing for the appellant submits that though they have reservations about the said findings of the adjudicating authority, that the goods are not covered by the notification, but inasmuch as the denial of benefit of said notification has not affected them, they paid the duty in cash and utilized the credit in next import, they are not seriously contesting the denial. Submits the learned advocate that in such a scenario, the confiscation with redemption fine and imposition of penalty was not warranted.

4. Countering the argument, learned DR Shri Govind Dixit submits that a special responsibility stand imposed upon the importer and inasmuch as he was utilizing and availing the benefit of said notification in number of imports, it has to be presumed that they are aware of the same and claim of exemption in respect of spare parts and accessories by the appellant reflects upon their malafide mind, thus calling for confiscation of the goods, imposition of penalty.

5. We note that the appellant had declared the goods correctly with the claim of notification. It was now in the hands of Customs Authority to examine such claim of the assessee and to allow or deny the benefit of the same. It is well settled law that claim of any exemption benefit by the importer, which claim stand made by correctly declaring the goods, cannot lead to any confiscation or imposition of penalty. The appellant according to their understanding, had claimed the benefit of notification No. 104/09 and had correctly placed all the facts before the Customs authorities. In such a scenario, we agree with the learned advocate that merely on account of denial of benefit of notification, the Revenue department cannot held them guilty of any contravention. We accordingly, set aside the confiscation of the goods and penalty imposed upon the appellant and allow their appeal with consequential relief.

(pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(V. Padmanabhan)
Member(Technical)

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