CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 17.03.2017

Customs Appeal No. 52975 of 2015

(Arising out of order- in- appeal No. CC(A) CUS/D-I/EXP/224/2015 dated 13.05.2015 passed by the Commissioner of Customs, New Delhi).

M/s Singh World Appellant

Vs.

CC, New Delhi Respondent

Appearance:

Sh. Piyush Kumar, Advocate for the appellant
Sh. K. Poddar, AR for the Respondent

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

F. O. No. 52551/2017

Per: **Justice (Dr.) Satish Chandra**:

The present appeal is filed against the order- in- appeal No. CC(A) CUS/D-I/EXP/224/2015 dated 13.05.2015 passed by the Commissioner of Customs, New Delhi.

2. The brief facts of the case are that the appellant had imported a consignment of camera accessories under Bill of Entry No. 5766852 dated 18.01.2012 and cleared the same on payment of duty by debiting transferable scrip issued under Focus product scheme authorisation by the DGFT, New Delhi availing the benefit under Notification No. 92/2009-Cus. dated 11.09.2009. Upon investigation, it was found by the department that the licence was issued against the fake shipping bills. Penalty was also levied. Being aggrieved, the present appeal is filed by the appellant.

3. With this background, we heard Sh. Piyush Kumar, ld. Advocate for the appellant who submits that the appellant has already debited the duty alongwith interest. Thus, the duty is not in question, the only grievance of the appellant is that penalties of Rs. 2,12,122/- under Section 114A and Rs.1,00,000/- under Section 114AA of the Customs Act, 1962. He submits that the appellant has purchased the licence from the market which was issued by the DGFT. The same was registered with the Customs Authorities. The consideration was paid by the appellant through the banking channel. Later, it was found that the licence was obtained in the market against the forged shipping bill. He submits that there is no malafide intention on the part of the appellant. He relies on the ratio laid-down in the following cases:

(i) Pee Jay International vs. CC- 2016 (340) ELT 625 (P&H);

(ii) Pee Jay International vs. CC- 2014 (312) ELT 464 (Tri. Del.);

(iii) Binani Cement Ltd. vs. CC – 2010 (259) ELT 247 (Tri. Ahmd.);

(iv) Deep Exports vs. CC – 2016 (338) ELT 742 (Tri. Del.); and

(v) CC, Amritsar vs. Patiala Castings Pvt. Ltd. -2012 (283) ELT 269 (Tri. Del.).

4. On the other hand, Sh. K. Poddar, ld. AR for the Revenue reiterated the findings in the impugned order. He submits that when the duty is paid penalty is mandatory in cases of fraud. He also relied upon the decision of the Punjab & Haryana High Court in the case of ***Friends Trading Co. vs. Union of India – 2011 (267) ELT 33 (P&H)***.

5. After hearing both sides and on perusal of record, it appears that in the instant case, import license was purchased by the appellant from the market which was issued by the DGFT and the same was registered with the

Customs authorities. Payment was made through the banking channel. Thus, the appellant was vigilant as per the maxim *EX ALUN DANTI CAUTELA*.

6. It appears from the case laws cited above that the penalty can be waived in the case where bonafide belief is available and no malafide intention was for committing the fraud. In the instant case, we are satisfied that appellants have purchased the licence from the market for import of the goods being the vigilant buyer. Moreover, the license was issued by the DGFT. They were not aware that the licence was forged or genuine. The documents were submitted by the seller was not examined by the department. The appellant has purchased the licence from the market under the bonafide belief, the failure is mainly on the part of the DGFT.

7. In view of the above, we are of the view that this is a fit case where both the penalties can be cancelled and hence we cancelled. Hence, we cancel the levy of penalties.

8. In the result, appeal filed by the appellant is allowed.

(Dictated and pronounced in the open Court).

(V. Padmanabhan)
Member (Techical)

(Justice (Dr.) Satish Chandra)
President

Pant