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

Customs Appeal No. 50001 of 2017

[Arising out of Order-in-Original No 04/PPG/BBG/2016 dated 5.10.2016 passed by the Commissioner of Customs, Delhi.]

M/s. Leather Sellers **Appellants**

Vs.

Commissioner of Central Excise Patparganj **Respondent**

Appearance:
Shri Ashish Kumar Shukla, Advocate for the Appellants
Shri Pardeep Juneja, DR for the Respondent

CORAM:

Hon'ble Shri Ashok Jindal, Member (Judicial)

Date of Hearing /decision: 29.08.2017

FINAL ORDER NO. 56356 /2017

Per Ashok Jindal:

The appellant is in appeal against the impugned order wherein the bank guarantee has been appropriated for re-importation of goods which has not been re-exported within 6 months in terms of notification No. 158/95. Facts of the case are that appellant exported one consignment. When it was found defective, the appellant reimported the said consignment and not paid the Customs duty in terms of notification No. 158/95 which provides that after removing the defects, the goods is required to be re-exported within three years of reimport.

But the export is required to be made within 6 months and if there is delay, the appellant would seek extension from the Commissioner of Customs from time to time. In this case, the appellant did not re-export the said consignment within six months, but within 9 months, the said consignment was re-exported. As appellant did not seek prior permission within six months for extension of time, therefore the bank guarantee given at the time of re-import has been forfeited. Aggrieved from the said order, appellant is before me.

2. Learned Counsel for the appellant submits that it is second round of litigation. In the earlier round of litigation, vide order No. C/A/329/12 dated 5.11.12, the matter was remanded back to the adjudicating authority to reconsider the condition of notification and reconsider the request of the appellant for extension of time. But the adjudicating authority did not consider his request and rely on the decision of ***R R Kobler Overseas P Ltd. vs. CC, New Delhi***, by which no consideration has been given in the impugned order, and rejected their request of extension of time. It is his submission that in the notification, it is not mentioned that extension of time is required to be prior to expiry of initial six months of reimport. Therefore, as appellant has complied with the condition of filing extension of time. In that circumstances, the appellant has substantially complied with the condition of notification. Therefore, impugned order has to be set aside.

3. On the other hand, learned AR reiterated the finding of the impugned order.

4. Heard both sides and considered the submissions.

5. On careful consideration of submission of both the sides, I find that the sole dispute is that whether the appellant has complied with the condition of notification No. 158/95 or not. The condition of the notification are extracted below:

(i) Such re-importation takes place within 3 years from the date of exportation.

(ii) Goods are re-exported within six months of the date of re-importation or such extended period not exceeding a further period of six months as the Commissioner of Customs may allow.

On going through the condition mentioned in the notification, nowhere it is mentioned that the appellant is required to seek extension of time within six months from the date of re-importation. In fact, the fact is not in dispute that re-imported goods are required to be re-exported within three years of re-import as per condition (i) of the said notification. When the main condition of notification has not been violated by the appellant, therefore the benefit of notification cannot be denied merely on the ground that appellant did not seek extension of time within 6 months of re-import. Moreover, the facts of ***R R Kobler*** has no relevance to the facts of this case as in that case, appellant did not claim extension of time where as the in the present case, the appellant filed an application for extension of time although after expiry of six months , this fact has not been disputed. In the circumstances, I hold that appellant has complied with the condition of notification No. 158/95. Therefore, bank guarantee executed at the time of re-importation is not required to be forfeited therefore, impugned order is set aside and appeal is allowed with consequential relief.

(pronounced in the open court)

(Ashok Jindal)
Member(Judicial)

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