IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Decision: 5.10.2017

Appeal No. C/51269-51273/2017-DB

(Arising out of Order-in-Original No. 58/COMMR/DDN/2017 dated 12.4.2017 passed by the Commissioner , Customs, Central Excise & Service Tax, Dehradun)

Shri Abhishek Goel — Appellant
Shri Pranay Goel
Shri Kshitij Mathur
Vector Ingot Pvt. Ltd.
Shri N.K. Goel

Vs.

CCE, & ST, Dehradun — Respondent

Appearance

Shri Ravin Rao, Advocate - for the appellant
Shri Shashank Bansal, Advocate
Shri Ankit Goel, Advocate

Shri R.K. Manjhi, A.R. - for the respondent

CORAM: **Hon'ble Mr. Ashok Jindal, Member (Judicial)**
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No. 57049-57053/2017

Per Ashok Jindal :

The appellants are in appeal against the impugned order wherein the goods intercepted has been confiscated. Consequently, the differential duty on the imported gold has been demanded, allowed to be redeemed on payment of redemption fine and various penalties have been imposed on all the appellants.

2. The brief facts of the case are that the main appellant M/s Vector Ingot Pvt. Ltd. is engaged in the manufacture of gold bars of

purity of 99.5% and above. The unit is located in the state of Uttarakhand at Haridwar. Therefore, they are availing exemption under Notification No. 50/2003-CE dated 10.6.2003. The appellant imported two consignments of having the gross weight of the gold of 16.17290 and 12.85620 Kg. The goods were reached to the factory premises on 2nd December 2015 and on 3.12.2015 a truck bearing registration No. DL-ILR-7167 was intercepted at Jamalpur Tiraha, Haridwar which was carrying gold under transfer invoice No. 99 dated 3.12.2015 showing the weight as 31 Kg. and the value of the goods was declared as 7,67,56,000/-. On physical verification, it was found that the said consignment contained 25 gold bars weighing 25,267.57 Kg. As there was a shortage of 5732.43 Kg., further, investigation was conducted. On the basis of the investigation, it was alleged that the appellant is not maintaining proper records of their activity under the Customs (Import of Goods at Concessional Rate of Duty for manufacture of Excisable goods), Rules, 1996. Therefore, the goods were seized and Show Cause Notice was issued to the appellant to demand differential duty as the appellant is not following the procedure laid down under the said rules and Notification No. 12/2012 for import of the said gold at concessional rate of duty. The matter was adjudicated, the demand of differential duty was confirmed on the imported goods and the goods were held liable for confiscation which were allowed to redeem on payment of redemption fine of Rs. 1 crore and penalties on all the appellants were imposed. Aggrieved from the said order, the appellants are before us.

3. The ld. Counsel appearing on behalf of the appellant submits that the appellant has imported two consignments and the said goods contained in these consignments have been converted into 99.5% purity and transferred to their head office. It inadvertently in transfer invoice NO. 99 dated 3.12.2015, the weight of gold was mentioned as 31 Kg. In fact, at the time of search in their factory, no other goods were found in their factory. It is his contention that whatever gold they import, immediately they converted into 99.5% purity and transferred to their head office. Therefore, there was no goods available in their factory. He further submitted that although at the time of visit, no proper records were available with them but they were maintaining proper records which were submitted later on and the same has been considered. In that circumstances, as there was no discrepancy in their operations, therefore, the differential duty cannot be demanded. Consequently, the goods are not liable for confiscation and no penalty is imposable on the appellant.

4. On the other hand, ld. AR opposed the contention of the ld. Counsel and submits that as it is an admitted fact, the appellant is not maintaining proper records as per the rules. Therefore, goods were rightly confiscated and the goods has not been used for intended

purpose, therefore, duty is rightly demanded. In that circumstances, he supported the impugned order.

5. Heard the parties and perused the record.

6. On perusal of the record, in para 28 of the impugned order, the ld. Adjudicating authority has observed as under:

> "28. As regards 25267.57 grams of Gold Bars found to have been removed without proper documents, I observe that these are to be treated as manufacture from "Gold Dore Bars" imported by wrongly availing concessional rate of duty under the said Notification and cleared without maintenance of proper records under the IGCRD Rules. The fact regarding non maintenance of proper accounts was also admitted by Shri Kshitij Mathur, the authorised signatory/legal advisor of M/s Vector Ingot in his statement recorded under Section 108 of the Act on 17.12.15. The party was given opportunities to provide documents/records maintained by them but no documents/records were submitted by them in support of their contention."

7. On going through the said findings of the adjudicating authority, wherein it has been held by the adjudicating authority that the goods seized are manufactured out of the goods imported by the appellant. Therefore, as goods imported has been used for intended purpose, in that circumstances, the appellant has complied with the condition of the Notification No. 12/2012. Therefore, the duty demand against the appellant is not sustainable. In view of the above observations, the demand of duty and interest are set aside.

8. We also take note of the fact that neither during the investigation nor at the time of transportation the goods, the appellants were carrying proper documents for transportation of the said goods. As the appellant is not maintaining the proper records of the imported goods including sl. number, date etc. and not maintaining the record of intended use of the said goods, in that circumstances, the goods are liable for confiscation in terms of Section 111(o) of the Customs Act, 1962. Therefore, the confiscation of the impugned goods is upheld.

9. Considering the fact that the redemption fine and penalty imposed on the appellants on higher side, therefore, they are reduced as under:

(a) Redemption fine is reduced to Rs.25 lakhs.

(b) Penalty on Shri Pranay Goel, Managing Director is reduced to Rs. 5 lakhs.

(c) Penalty on M/s Vector Ingot Pvt. Ltd. is reduced to Rs. 10 lakhs.

(d) Penalties on Shri N.K. Goel and Shri Abhishek Goel, Directors are reduced to Rs. 1 lakh each.

10. Considering the fact that Shri Kshitiz Mathur is an employee and have nothing to gain with the said activity and was working on

the instructions of the Directors of the company, therefore, penalty on shri Kshitiz Mathur is dropped.

11. With these observations, the following order is passed:

(a) Demand of duty along with interest are set aside.

(b) Goods are held liable for confiscation and can be redeemed on payment of redemption fine of Rs.25 lakhs.

(c) Penalty on M/s Vector Ingot Pvt. Ltd. is reduced to Rs.10 lakhs.

(d) Penalty on Shri Pranay Goel, Managing Director is reduced to Rs. 5 lakhs.

(e) Penalties on Shri N.K Goel and Shri Abhishek Goel, Directors are reduced to Rs. 1 lakh each.

12. With these terms, the appeals are disposed of.

(Dictated & pronounced in open Court)

(B. Ravichandran)
Member (Technical)

(Ashok Jindal)
Member (Judicial)

RM