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

Date of hearing/decision: 12.12.2017

Customs Appeal No. 51597 of 2017
(Arising out of order in original No. 08/2017.Commr/ICD/TKD dated 07.08.2017 passed by the Commissioner of Customs (Import) New Delhi)

M/s Roop Automotives Limited Appellant

Vs.

CC, ICD (Import) Tughlakabad, New Delhi Respondent

Appearance:

Sh. S. C. Jain, Advocate for the appellant
Sh. P. Juneja, AR for the Respondent

Coram:

Hon'ble Mr. S. K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No. 58388/2017

Per: **B. Ravichandra**:

The appeal is against order dated 07.08.2017 of Commissioner of Customs, ICD, Tughlakabad, New Delhi. The appellant exported certain automobiles components in the year 2014. These goods were found defective and were sent back by the importer to the appellant. These goods were re-imported by the appellant who filed bill of entry dated 20.03.2015. The goods were allowed to be cleared without payment of duty in terms of Notification No. 158/95-Custosms dated 14.11.95. The goods were allowed to be out of charge of customs on 01.04.2015. After due repair the imported goods were re-exported by the appellant by filing five shipping bills. These shipping bills were filed in March, 2016. These goods were re-exported by filing shipping bills by the appellant. The dispute relates to three shipping bills which were filed in March, 2016. The Revenue held a view that these re-exports have not happened within the stipulated time of six months from the date of re-import of the dutiable goods and accordingly the imported goods which were covered by these shipping bills were held liable for duty amounting to Rs. 17,19,340/- by denying the exemption under Notification No. 158/95 dated 14.11.95.

2. Ld. Counsel for the appellant submitted that the goods which were reimported by the appellant have been duly re-exported under the cover of five shipping bills. These shipping bills refer to the bill of entry under which these goods were re-imported into India. The only objection of the Revenue is that gods under three of the shipping bills were found re-exported beyond a period of six months. He contested the finding recorded by the original authority that there were shipments even beyond one year. This is factually incorrect without considering the out of charge was dated 01.04.2015. It is the submission of the ld. Counsel that the goods have been exported out of India and they were not consumed into India and as such no customs duty can be charged on these goods. Further, the exports happened within one year of the import and the only procedural lacunae on the part of the appellant is that they did not file extension of time for re-export after the expiry of date of initial six months. For such procedural lapse, duty demand of Rs. 17,90,340/- cannot be confirmed against them. He also relied on various decided cases.

3. Ld. AR appearing for the Revenue submitted that while facts are admitted, the condition of the notification for re-export within six months of the import has to be strictly applied. The extension of six months is available

to the appellant and the same can be given only on due requests and verification by the jurisdictional Commissioner. In the present case, the appellant chose not to seek extension of time limit and as such cannot claim the exemption automatically.

4. We have heard both the sides and perused appeal record.

5. Regarding the facts of the case, it is admitted that the goods have been re-exported within one year of re-import into India. The relevant date under Notification No. 158/95 has been clarified by the Board vide Circular dated 03.06.97. Accordingly, considering the date of actual clearance of goods on assessment of bill of entry of all the re-exports in the present case happened within one year. Regarding re-exports made after six months of re-import, we note that the appellant did not seek due extension from the Commissioner of Customs. The question now is whether not obtaining due extension will be fatal to the claim of exemption under Notification No. 158/95. The appellant are put to a duty of Rs. 17,19,340/- only on the ground that the re-export did not happen within six months. The custom duty is levied on goods imported into India for home consumption. Admittedly, the goods are not in India and they were duly allowed for export. In such situation, the demand of customs duty only on the ground that the appellant did not seek/ get an extension of time limit for re-export of goods is not sustainable. We note that the extension of time limit which is otherwise available as part of the terms of the said Notification should be considered as procedural in the present facts of the case. Reliance placed by the original authority on the decision of the Tribunal will not lead to a situation of confirmation of custom duty. If at all, the

appellant may be liable for penalty for violation of the condition of the Notification in not seeking extension of time. Denial of exemption will not be justified. We note that similar matters had come up before the Tribunal in the case of Teletube Electronics Ltd. vs. CC, ICD, Tkd, New Delhi-2009 (240) ELT 710 (Tri. Del.). The Tribunal held that when the matter of export is not in dispute, denial of exemption under Notification No. 158/95 only on the ground of non availability of permission extending the time limit is not sustainable.

6. In view of the above discussions and analyses, as there is no other dispute on import/ export, we find the impugned order is not sustainable. Accordingly, the same is set aside. The appeal is allowed.

(Dictated and pronounced in the open Court).

(B. Ravichandran)
Member (Technical)

(S. K. Mohanty)
Member (Judicial)

Pant