CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

S.No.	Appeal No.	Appellant	Respondent	Impugned Order No. & Date
1.	C/519/2006	CCCE&ST, Guntur	Nagarjuna Aqua Exports Ltd.	O-I-O No. CEX-06/2005 (Commr), dt. 12.12.2005 passed by CCCE, Guntur.
2.	E/227/2006	Nagarjuna Aqua Exports Ltd.	CCCE&ST, Guntur	.do.
3.	E/275/2006	A.G. Subbaryan, AGM, Nagarjuna Aqua Exports Limited	CCCE&ST, Guntur	.do.

Appearance
Smt. B.V. Siva Naga Kumari, Commissioner(AR) for appellant 1.
Smt. A.S.K. Sweta, Advocate for the Appellants 2 & 3.

Smt. A.S.K. Sweta, Advocate for the Respondent 1.
Smt. B.V. Siva Naga Kumari, Commissioner (AR) for Respondents 2 & 3.

Coram:
Hon'ble Mr M V RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr MADHU MOHAN DAMODAR, MEMBER(TECHNICAL)

Date of Hearing: 22.01.2018
Date of Decision: 22.01.2018

FINAL ORDER No. A/30472 – 30474/2018

[Order per: M V Ravindran, Member (Judicial)]

1. The following three appeals are directed against Order-in-Original No. CEX-06/2005 (Commr), dt. 12.12.2005:

C/519/2006, E/227/2006, E/275/2006

2. Appeal No. E/227/2006 is filed by Nagarjuna Aqua Exports Limited against confirmation of demands raised by the adjudicating authority and penalties imposed. Appeal No. E/275/2006 is individually filed by Shri A.G. Subbarayan, AGM, Nagarjuna Aqua Exports Limited against personal penalty imposed on him. Appeal No. E/519/2006 is filed by Revenue against order of the adjudicating authority of granting depreciation to the main appellant in respect of the demands raised on capital goods.

3. The relevant facts that arise for consideration, after filtering out unnecessary details, are that Nagarjuna Aqua Exports Limited is an 100% EOU engaged in production and export of shrimps; imported capital goods and raw materials in terms of notification No. 196/94-Cus dated 08.12.1994 for use in aquaculture project, with the condition that the goods are to be used in the production of aquaculture projects and 100% of the goods so manufactured shall be exported for a period of ten years.

4. On an investigation, it was noticed that main appellant cleared the prawns produced in the EOU without payment of applicable duties for the period 1994-95 to 2001-2002 in contravention of the terms of notification No. 196/94-Cus, dated 08.12.1994; cleared shrimp seed into DTA during the period 1994-95 to 1997-98 without payment of duty in violation of the Customs Act, 1962. Accordingly, demand was raised on the raw material used in such shrimp seed production and demand of custom duty was

raised in respect of imported capital goods, not found during verification. The adjudicating authority upheld the demands raised on all the above points but in respect of point No. 3, confirmed the demand after permitting depreciation allowed on capital goods, imposed penalties on main appellant as well as individual appellant.

5. Ld. Counsel after taking the Bench through various records, submits that as regards shrimp seeds cleared under DTA without requisite permission, the judgment of Hon'ble Apex Court in the case of NCC Blue Water Products Limited [2010(9) TMI 13)] would cover the issue in respect of clearances effected upto 11.05.2001, as post 11.05.2001 the notification got amended. As regards the demand for the period post 11.05.2001, they argue the same on limitation. It is her submission that in respect of the customs duty on imported raw materials used in the production of shrimp seed, the same does not stand scrutiny of law as the final products manufactured are non-excisable and customs duty paid for the purpose of manufacture of such exempted goods need to be equivalent to the customs duty and shrimp seeds being non-excisable, demand is incorrect and that extended period has been invoked as per section 28 of Customs Act, 1962, which is also incorrect as show cause notice is issued in the year 2005 while the import is for the period 1994-95 to 1997-98 and the period of limitation was not considered. As regards the demand of customs duty on capital goods, it is her submission that those capital goods found short were stolen and some of them were washed away in the floods, the facts which

are not disputed. It is her submission that the entire demand is hit by limitation and during the material period, the aqua industry faced tremendous problems due to which clearance of goods to DTA was affected, hence redemption fine and penalty imposed needs to be set aside. As regards the appeal filed by individual, she submits that the said Shri A.G. Subbaryan, AGM, Nagarjuna Aqua Exports Limited, who was working with the appellant, has expired on 13.09.2006. IT is her submission that this is her responsible statement before the Bench.

6. Ld. DR reiterated the findings of the lower authorities and submits that the demands confirmed by limitation as main appellant had undertaken to discharge the customs duty if export obligations are not met. It is his submission that the adjudicating authority has correctly relied upon the decision of the Apex Court in the case of Mediwell Hospital and Health Care Pvt. Ltd [1996(12)TMI 51]. As regards the appeal filed by the individual, she submits that she would reiterate the findings and leaves the decision to the Bench. As regards Revenue's appeal, it is her submission that adjudicating authority was error in extending the depreciation to the capital goods which was not found.

7. On careful consideration of the submissions made by both sides and perusal of records, we find that appeal No. E/275/2006 stands abated due to demise of the individual on 13.09.2006. We take responsible statement

made by Ld. Counsel on her words and hold that appeal abates. Appeal stands disposed of as abated.

8. As regards confirmation of demands raised against Nagarjuna Aqua Exports Limited, we find that in respect of clearances of prawns to DTA, without payment of applicable duties, we hold that during the period upto 11.05.2001, the excise duty on sale of shrimp seed was chargeable under main section 3(1) of Central Excise Act, 1944 and during the period till 11.05.2001, excise duty was nil. This is the law which has been settled by Apex Court in the case of NCC Blue Water products Limited. Respectfully following the judgment of Hon'ble Apex Court, we hold that the demands raised on point No. 1, to the extent they are for the period prior to 11.05.2001, are set aside and for the period post 11.05.2001, demands are confirmed as provisions of section 3(1) of Central Excise Act, 1944 were amended to hold that any goods brought to any other place are liable to Central Excise Duty. This is the law which has been settled by Hon'ble Apex Court in the case of NCC Blue Water Products Limited.

9. As regards points No. 2 & 3, we find that there is no dispute as to the fact that the appellant had resorted to clearance of shrimp seed to non DTA, claimed the benefit of exemption notification as goods are non excisable. The arguments put forth by Ld. Counsel that demand is not sustainable on merits, is non acceptable for the simple reason that the

inputs imported duty free have to be consumed as per the conditions laid down in notification No. 196/94-Cus which mandates that the inputs so imported have to be consumed for manufacturing of goods for export only. In the case in hand, it is an admitted fact that shrimp seeds which were cleared by utilising such material was cleared in DTA. We find that the demands confirmed by the adjudicating authority as customs duty on the inputs is correct and in consonance to the law and we do not find any reason to interfere in such a reasoned order on this point.

10. As regards the issue of demand of customs duty on the capital goods not found in the factory premises, we are unable to accept the arguments put forth by Ld. Counsel as there is nothing on record to show that the said goods were stolen or washed away during flood. In the absence of any evidence, we are of the view that the demands confirmed by the adjudicating authority needs to be upheld. At this juncture, Revenue's appeal for enhancing the said demands on the ground that depreciation granted by the adjudicating authority seems to be erroneous as the capital goods were not found in the factory premises, is an argument which needs to be rejected as there is no dispute that these capital goods were brought into EOU as per notification No. 196/94-Cus, installed and were used. If that be so, the depreciation allowed by the adjudicating authority seems to be in consonance with the Board Circular on the point. In view of this, we find no merits in the appeal filed by Revenue.

11. Coming to the issue of limitation argued by Ld. Counsel for the appellant, we find that appellant being an 100% EOU had given an undertaking and executed a bond for adhering to the conditions of the notification No. 196/94 and as recorded herein above, has violated the conditions. We find that the adjudicating authority was correct in relying upon the judgment of Hon'ble Apex Court in the case of Mediwell Diagnostics and Hospital Limited [1997 (089) ELT 425 (SC)] to confirm the demands. Hence the argument on limitation is rejected.

12. Coming to the question of confiscation of the inputs and capital goods not found in the factory premises, we find that the said inputs and capital goods have been cleared without following the conditions of notification No. 196/94-Cus and hence correctly held as liable for confiscation by the adjudicating authority. We do not find any reason to interfere in such an order of confiscation made by adjudicating authority and we also note that the redemption fine imposed in lieu of confiscation is very reasonable and no interference is called for in such an order.

13. As regards penalty of Rs. 10.00 lakhs imposed on appellant herein, we find that the said penalty seems to be excessive considering the fact that confirmation of demand of all the three points is approximately Rs. 17.00 lakhs. Keeping in mind the distress faced by appellant during the period in question, we hold that interest of justice would be met if the penalty is reduced to Rs. 5.00 lakhs (Rupees five lakhs only). Subject to

this modification, the penalty imposed on Nagarjuna Aqua Exports Limited is upheld.

14. All the appeals are disposed of as indicated herein above.

(Operative portion of the order pronounced in open court on conclusion of hearing)

(MADHU MOHAN DAMODAR)
MEMBER (TECHNICAL)

(M V RAVINDRAN)
MEMBER (JUDICIAL)

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