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

Appeal No. C/31278 & 31228/2017

(Arising out of Order-in-Appeal No. HYD-CUS-000-APP-072-17-18 dated 10.08.2017 passed by Commissioner of Customs & Central Excise (Appeals), Hyderabad)

M/s Techtran Polylenses Ltd., ...Appellant(s)

Vs.

Commissioner of Central Tax,
Hyderabad – G S T .....Respondent(s)

Commissioner of Central Tax,
Medchal - GST .....Appellant(s)

Vs.

M/s Techtran Polylenses Ltd., ...Respondent(s)

Appearance
Shri M. Sivaraman, Advocate for the Assessee.
Shri M. Chandra Bose, Additional Joint Commissioner, Shri Dass Thavanam, Superintendent (AR) for the Revenue.

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

Date of Hearing: 22/05/2018
Date of Decision: 10/08/2018

FINAL ORDER No. A/30926-30927/2018

[Order per: M.V. Ravindran]

These appeals are directed against Order-in-Appeal No. HYD-CUS-000-APP-072-17-18 dated 10.08.2017.

2. The appellant is a 100% EOU who is engaged in the manufacture/ processing of ophthalmic lenses/spectacle lenses. They were issued with permission under Section 58 of Customs Act, 1962 to be a customs private bonded warehouse. They had imported one "opto-tech free form lab set up with laser engraving mach, CNC blocker with premium software and accessories etc" without payment of duty in terms of Notification No. 52/2003 – Cus dated 31.03.2003 vide Bill of Entry No. 6281016 dated 30.07.2014. After receipt of the goods to their factory, the appellant appeared to have diverted unauthorisedly the imported goods to their sister unit in DTA viz M/s Techtran Opthalmics Pvt. Ltd., (TOPL) located in Balanagar, Hyderabad and without payment of appropriate duties due when goods were transferred out the bonded warehouse. Therefore, on the basis of the investigation carried out by Directorate General of Central Excise Intelligence, Hyderabad Zonal Unit, a show cause notice was issued to the appellant to confiscate the imported machinery and to demand an amount of Rs. 47,66,416/- being the duty not paid along with interest due thereon apart from the proposal

to impose penalties on the appellant company and its Non-Executive Chairman and General Manager (T) under Sections 112 and 117 of the Customs Act, 1962. After due process of law, the original authority confiscated the goods under Section 111(o) of the Act, 1962 but gave an option to redeem the goods on payment of Rs. 12,50,000/- and ordered recovery of Rs. 47,66,416/- being the duty payable along with interest in accordance with the bond executed by them read with Notification No. 52/2003- Cus. A sum of Rs. 6,00,000/- pre-paid was appropriated towards the duty so confirmed. A penalty of Rs. 47,66,416/- was imposed on the appellant under Section 111(o) of the Customs Act, 1962 (presumably under Section 112 of the Act, 1962). A penalty of Rs. 50,000/- each on S/Shri Chiguruapti Jayaram, Non-Executive Chairman and C. K. Hariharan, GM (Technical) of the appellant company under Section 117 of the Act, 1962 was also imposed.

3. Aggrieved by such an order, an appeal was preferred before the First Appellate Authority. The First Appellate Authority after following due process of law, as reduced the penalty imposed but upheld the Order-in-Original on the confirmation of the demands so raised. Revenue is aggrieved and is in appeal on such reduction of penalty while importer appellant is in appeal on merits.

4. Learned Counsel appearing for the appellant takes the Bench through the entire case records and submits that the capital goods were moved out of the EOU for testing purposes and there

was no intention to permanently shift to same out of the bonded premises. He would submit that there is no allegation that the goods were used for production in Balanagar Unit. Since there was only a procedural violation, duty cannot be demanded also in the absence of contravention with intention to evade duty the penalty imposed on them is also not legally correct.

5. Learned Departmental Representative reiterates the findings of the First Appellate Authority.

6. On careful consideration of submissions made by both sides, the issue which raised in this appeal is regarding whether the appellant has violated the Provisions of Section 58 of the Customs Act, 1962 read with Notification No. 52/2003 -CUS in relation to capital goods which were imported without payment of duty.

7. I find that there is no dispute that the capital goods which were imported without payment of duty claiming the benefit of Notification No. 52/2003 were transferred out of the EOU after their importation and bonding in the EOU. Though, there is a claim of the appellant the machinery was not installed in DTA unit, it is a finding of the Adjudicating Authority that the machinery was installed and used for the manufacture of the goods in DTA unit. I find that in the case in hand, both the Lower Authorities have recorded a concurrent finding and the machinery which were imported by claiming the exemption

for installation in EOU, were not installed, were found in DTA. Appellant was not able to produce any documents to show that they done so by seeking the permission of the Revenue Authorities.

8. In my considered view, in the absence of any such evidence, the action of the appellant to remove the machinery from EOU to DTA without any permission from the authorities, is incorrect and the findings reached by the lower authorities is correct.

9. As I have disposed of the appeal on merits, I find that penalties imposed by First Appellate Authority are appropriate and find no merits in the appeal of Revenue.

10. In the facts and circumstances of this case, in view of the foregoing, I hold that the impugned order is correct and legal and does not require any interference. The appeals stands rejected.

(Order pronounced on 10/08/2018 in open court)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

Lakshmi….