IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

EASTERN ZONAL BENCH: KOLKATA

Customs Appeal Nos. C/199/09, C/294-295/2009

(Arising out of Order-in-Original No. KOL/CUS/PORT/19/2009 dated 17.03.2009 passed by the Commissioner of Customs (Port), Kolkata)

M/s. The Hooghly Mills Co. Ltd.

Commr. of Customs (Port), Kolkata

Applicant (s)/Appellant (s)

Vs.

Commr. of Customs (Port), Kolkata

M/s. The Hooghly Mills Co. Ltd.

Respondent (s)

Appearance:

Shri Sourabh Bagaria, Advocate
& Shri Indranil Banerjee, Advocates for the Appellant (s)

Sri S.N. Mitra, A.C. (A.R.) for the Respondent (s)

CORAM:

Hon'ble Shri P.K.Choudhary, Member (Judicial)
Hon'ble Shri Bijay Kumar, Member (Technical)

Date of Hearing/Decision:- 04.06.2018

ORDER NO. : F/O 76207-209/2018

Per Shri Bijay Kumar

All these appeals have arisen from Order-in-Original No. KOL/CUS/PORT/19/2009 dated 17.03.2009 passed by the Commissioner of Customs (Port), Kolkata. Against this order-in-original, both the manufacturer/exporter and Revenue have filed appeals before the Tribunal. Manufacturer/Assessee's appeal Nos. 199/09, which has been filed by the Director of the company and the Revenue's appeal Nos. are 294 & 295/2009.

2. The issue in brief is regarding availment of the draw back for export of Jute Yarn. It is the case of the Department that the export is not of Jute Yarn but of Jute Twine. It was alleged that export product Jute Yarn was being exported as jute twine for claiming higher rate of draw back under the Drawback Rules.

3. In these appeals issue is about the export of products i.e. Jute Yarn as Jute Twine. It has been submitted by the Ld. Advocate that as per practice prevalent in the trade at the relevant time both the Jute yarn and twine were treated as one and the same. Also, the department was permitting such exports in past. However, to resolve the issue, Revenue referred the matter to Institute of Jute Technology, Kolkata for expert opinion. The technical opinion of the Jute Technology India opined that the Jute Yarn and Twine are two different products and Jute Yarn cannot be treated as Jute Twine. Therefore, according to Revenue, the appellant are not entitled to the higher rate of draw back for “Jute twine” for export product “Jute yarn”. The Revenue is before us for imposition of redemption fine on the exported goods as the Adjudicating Authority has not imposed the Redemption Fine during adjudication process in the impugned order.

4. The Ld. Advocate has submitted that the classification of Jute Yarn and Jute Twine is subject matter of present appeal. This Hon’ble Bench of the Tribunal in case of Kajaria Yarn & Twine Ltd. Vs. Commissioner of Customs (Port) Kolkata [2016 (340) ELT 257] has decided that there is no provision for imposition of penalty in this case as the goods were examined and goods were exported thereafter and draw back claim was allowed. Further, he relied on the decision of the Hon’ble Bombay High Court in the case of Shiv Kripa Ispat Pvt. Ltd. Vs. Commissioner of Central Excise & Customs, Nasik reported in 2009 (235) E.L.T. 623 (Tri.-LB) and Commissioner of Customs (Import), Mumbai Vs. Finesse Creation Inc.

reported in 2009 (248) E.L.T. 122 (Bom.) on the issue of confiscation and redemption fine not imposable when goods are not available for seizure. Department's appeal against Bombay High Court's order in case of Commissioner Vs. Finesse Creation Inc. [2010 (235) ELT A 120 (SC)] had been dismissed by Hon'ble Supreme Court. Therefore, he is of the opinion that neither penalty nor redemption fine are imposable in this case.

5. On the other hand, the Ld. D.R. relied upon the provisions of Section 114 of Customs Act for imposition of penalty on the exporter. On the aspect of the penalty although agreed with the decision of Kajaria Yarn & Twins Ltd., decision referred above but was of the opinion that in view of findings in cases of Weston Components Ltd. Vs. Commissioner [2000 (115) ELT 278 (S.C.) and Venus Enterprises Vs. Commissioner[2006 (199) ELT 661 (Tribunal), the penalty as well as redemption fine is imposable.

6. We have heard both the parties and also perused the case record. On perusal of the case laws submitted by both the sides, it appears that the issue is settled in favour of Appellant and against the revenue. Relying on the decision of Kajaria Yarn and Twine, same is the case for imposition of redemption fine and penalty in view of Hon'ble Bombay High Court's decision in case of Finesse Creation Inc. We, therefore, hold that the appeals filed by the Revenue is not sustainable and appeal of the appellant is required to be allowed. Accordingly, we allow the assesses appeal and dismiss the Revenue's appeal.

(Dictated and Pronounced in the Open Court)

Sd/- 06/06/18 **Sd/-**

(P.K.Choudhary)
MEMBER(JUDICIAL)

(Bijay Kumar)
MEMBER(TECHNICAL)

k.b/-