IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal Nos.C/395, 396 & 397/2009

(Arising out of Order-in-Appeal No.Kol/Cus/CKP/314-316/2009 dated 27.05.2009 passed by the Commissioner of Customs (Appeals), Kolkata)

M/s Metalink

Applicant (s)/Appellant (s)

Vs.

Commissioner of Customs, Kolkata

Respondent (s)

<u>Appearance:</u>
Shri N.K.Choudhary, Advocate for the Appellant (s)
Shri S.Guha, AC(AR) for the Respondent (s)

CORAM:
Hon'ble SHRI P.K.CHOUDHARY, Member (Judicial)
Hon'ble SHRI C.L.Mahar, Member (Technical)

Date of Hearing/Decision:- 19.06.2018

ORDER NO.FO/76356-358/2018

Per Shri P.K.Choudhary

The facts of the case in brief are that the appellants exported 19855 Kgs. of "Hot Dip Galvanized Steel Bars and Rods" to their buyer at USA. The said goods were imported back for undertaking some process reconditioning vide Bill of Entry No.324686 dated 05.02.2007 without payment of duty, availing the benefit of Exemption Notification No.158/95-Cus dated 14.11.1995. The appellant executed Bond and Bank Guarantee. After importation, the appellant undertook further processes and made reconditioning of the goods to make it acceptable to the foreign purchasers and thereafter the goods were re-exported. Show Cause Notice was issued demanding customs duty for non-fulfillment of the condition of the Notification No.158/95-Cus dated 14.11.1995 alongwith interest and confiscation of the goods and imposition of penalty was also proposed. The Adjudicating Authority confirmed the demand of duty of Rs.2,10,181/- along with interest and ordered for appropriation of bank guarantee for Rs.52,545/- . On appeal the Commissioner (Appeals) rejected the appeals filed by the assessee and upholds the adjudication order. Hence the present appeals before the Tribunal.

Appeal No.	Duty Demand	Bank Guarantee	Balance Demand
C/395/2009	Rs.2,10,181/-	Rs.52,545/-	Rs.1,57,636/-
C/396/2009	Rs.3,49,041/-	Rs.1,16,347/-	Rs.2,32,694/-
C/397/2009	Rs.2,92,522/-	Rs.97,507/-	Rs.1,95,015/-

2. Ld. Advocate appearing on behalf of the appellants vehemently argued that the impugned order is not maintainable in law in view of the fact that the said order has been passed without considering the extension of substantial benefit to the appellant more particularly when the export was made. He further submits that the re-imported goods were defective and the process for curing the defects took some time and he also mentioned that for some period, the exports were also banned by the US authorities and accordingly the delay in re-export of the goods was beyond the control of the appellants. Several factors contributed to the delay in exporting the goods. He prayed that substantial benefit of the notification should not be denied to the appellant. Ld. Advocate strongly contended that at the time of the export, the customs official verified the facts, condoned the delay and allowed the exports. Ld. Advocate submitted a compilation of case laws.

3. Ld. D.R. filed copy of Notification No.158/95-Cus dated 14.11.1995 and also relied upon the decision of the Apex Court in Commissioner of Central

Excise, Chandigarh-I vs. Mahaan Dairies [2004(166) ELT 23 (S.C.)]. He reiterated the order of the Commissioner (Appeals).

4. Heard both sides and perused the appeal records.

5. We find that the issue is no more resintegra in view of the decisions of the Hon'ble High Court and the Tribunal. We also find that in the case of Modern Process Printers, the Revisionary Authority, Department of Revenue, Ministry of Finance, Government of India vide Order dated 18.11.2005 reported in [2006 (204) ELT 632 (G.O.I) have held as under:

> ***"6.3*** *In this regard, it cannot be gainsaid that rebate/drawback and other such export promotion scheme of the Govt., are incentive-oriented beneficial schemes intended to boost export in order to promote exports by exporters to earn more foreign exchange for the country and in case the substantive fact of export having been made is not in doubt, liberal interpretation is to be accorded in case of technical lapses if any, in order not to defeat the very purpose of such scheme. In Suksha International v. Union of India, 1989 (39) E.L.T. 503 (S.C.), the Hon'ble Supreme Court has observed that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. In Union of India v. A.V. Narasimhalu, 1983 (13) E.L.T. 1534 (SC), the Apex Court also observed that the administrative authorities should instead of relying on technicalities, act in a manner consistent with the broader concept of justice. Similar observations was made by the Apex Court in the Formika India v. Collector of Central Excise, 1995 (77) E.LT. 511 (SC), in observing that once a view is taken that the party would have been entitled to the benefit of the Notification had they met with the requirement of the concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical grounds that the time when they could have done so had elapsed. While drawing a distinction between a procedural condition of a technical nature and a substantive condition in interpreting statue similar view was also propounded by the Apex Court in Mangalore Chemicals and Fertilizers Ltd. v. Dy. Commissioner - 1991 (55) E.L.T. 437 (SC). In fact, as regards rebate specifically, it is now a trite law that the procedural infraction of Notification/Circulars etc., are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirements. The core aspect or fundamental requirement for rebate is its manufacturer and subsequent export. As long as this requirement is met, other procedural deviations can be condoned. Such a view has been taken in Birla VXL - 1998 (99) E.L.T. 387 (Tri.), Alfa Garments - 1996 (86) E.L.T. 600 (Tri), Alma Tube - 1998 (103) E.L.T. 270, Creative Mobous - 2003 (58) RLT 111 (GOI), Ikea Trading India Ltd. - 2003 (157) E.L.T. 359 (GOI), and a host of other decisions on this issue.*
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> ***6.4*** *In view of the discussions made above and keeping in mind the observations of Hon'ble Supreme Court in judgments cited supra and catena of decisions of Hon'ble CESTAT/Govt. of India that substantive fact of actual export is not disputed, Govt. feels*

that denial of export relief in this case on the sole ground is not justified. Govt. accordingly sets aside the impugned Order-in-Appeal and restores the Order-in-Original passed by the original/rebate sanctioning authority."

6. On going through the above decision we find that the mere fact that it is statutory does not matter one way or the other. Some conditions may be substantive, mandatory and based on considerations of policy and some other may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve. It is not in dispute that the goods were finally exported. The delay in re-export of the goods within the stipulated time limit was due to unavoidable circumstances as explained by the ld. Advocate.

7. In view of the above discussions the impugned order is set aside and the appeals filed by the appellant is allowed with consequential relief.

(Operative Portion of the Order already pronounced in the Open Court)

S/d.
(P.K.Choudhary)
Member (Judicial)

S/d.
(C.L.Mahar)
Member (Technical)

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