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

REGIONAL BENCH – COURT NO.2

Customs Appeal No.76853 o 2017
Customs Appeal No.76854 o 2017
Customs Appeal No.76855 o 2017

(Arising out of Order-in-Original No.Kol/Cus/Commissioner/Port/29/2017/Adj.(Port) dated 31.08.2017 passed by Commissioner of Customs (Port), Kolkata)

1. **M/s Coastal Packagers Private Limited**
   8 Camac Street, Room No.9, 8th Floor, Kolkata 700017
2. **M/s J & D Wilkie Bengal Pvt. Limited**
   8 Camac Street, Room No.9, 8th Floor, Kolkata 700017
3. **Shri Yash Kumar**
   8, Camac Street, Room No.9, 8th Floor, Kolkata 700017

Appellant

VERSUS

Commissioner of Customs (Port), Kolkata
15/1, Strand Road, Kolkata-700001

Respondent

APPERANCE :

Shri Indranil Banerjee, Advocate for the Appellant
Shri S.Chakraborty, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER NO…75638-75640/2023

DATE OF HEARING : 07.06.2023
DATE OF DECISION : 07.06.2023

Per Ashok Jindal :

The appellants are in appeal against the impugned order imposing penalty under Section 114 (iii) of the Customs Act, 1962.

2. The facts of the case are that an intelligence was received by DRI to the effect that the Appellant No.(3), a trader of jute goods through its firms, Appellant No.(1) & (2), who are merchant exporters, had exported different types of jute products through Kolkata/Haldia Port and claimed of export incentive –Duty Entitlement Pass Book Scheme

(Post Export)/Drawback during the period 2010-2011 to 2014-15 by mis-declaring the same as of Indian Origin in the export documents were actually of Bangladesh origin.

2.1 Thereafter, on 13.11.2014, a search was conducted and the Appellant No.(3) revealed that the Appellant No.(1) & (2) were in merchant export of jute finished goods and commodities, that they were not having any manufacturing activity, but some job conversion was done and both the firms were also involved in trade of jute finished goods, both imported and locally procured. That import of jute products was from Bangladesh and that mostly jute bags, jute cloths, jute yarns were imported from Bangladesh. That they had related transactions between the firms, namely, Appellant No.(1) & (2). That in usual course of business, both Appellant No.(1) & (2) procured jute finished products/items from domestic market for catering to overseas customers i.e. for exports. That however, there were some inter unit transactions between the Appellant No.(1) & (2) having a few instances of export of jute items/finished products out of imports from Bangladesh. That he was aware that drawback was not admissible on export of imported goods, but as per his belief, only in a few cases, they might have inadvertently availed drawback, which is not admissible.

2.2 In the above set of facts, the proceedings were initiated against the appellants by the Customs Authorities as well as DGFT.

2.3 Immediately, after investigation, the appellants reversed the excess drawback claimed by the appellants along with interest.

2.4 The proceedings initiated by DGFT were dropped against the appellants considering the bonafide mistake on the part of the appellants, but the adjudicating authority proceeded to impose the penalties on all the appellants Rs.5.00 lakhs each.

2.5 Against the said order, the appellants are before me.

3. The ld.Counsel appearing on behalf of the appellant, submits that due to bonafide mistake of the appellants, they had availed drawback claim on the goods imported by them from Bangladesh origin but they paid the whole of the drawback claimed by them along with interest. In that circumstances, the penalties on the appellants are not imposable as the case where DGFT itself has dropped the proceedings against the appellants. He, therefore, prays that the penalties be set aside.

4. On the other hand, the ld.A.R. for the Revenue, submits that the appellants having malafide intention, have claimed drawback of their export knowing that they are not entitled to drawback claim of the goods having country of origin of Bangladesh.

5. Heard the parties and considered the submissions.

6. As it is on record that the appellant paid drawback claim along with interest and DGFT has dropped the proceedings against the appellants, in that circumstances, reliance has been placed by the ld.Counsel for the appellants in the case of M/s Blackstone Overseas Pvt. Ltd. Vs. Commissioner of Customs (Port), Kolkata reported in 2018-TIOL-3905-CESTAT-KOL , wherein this Tribunal has held as under:

> *"However, taking into consideration of the fact that the DGFT authorities had already imposed penalty upon the appellant, the penalty imposed on the appellant company is not warranted. Further, after going through the statements and the conduct of*

the appellant no.2 in so far as they have returned the incentive immediately, the penalty imposed under Section 114 (iii) on the appellant no.2 needs to be waived."

7. Again, this Tribunal in the case of Gayson & Company (P) Ltd. Vs. Commissioner of Customs (Port), Kolkata reported in 2019 (370) ELT 1026 (Tri.-Kolkata), has taken a view, which is as under :

"***9.*** *However, taking into consideration of the fact that the DGFT authorities had already imposed penalty upon the appellant, the penalty imposed on the appellant company is not warranted. Regarding imposition of penalty on the Appellant No. 2, Director of the appellant company the adjudicating authority observed that Shri Chetan Aggarwala was aware of the fact that no export incentive was availed on FeSi of Bhutanese origin and returned the entire amount of the incentive therefore imposition of penalty is not warranted."*

8. I observe that the appellants' case on better footing as in cases cited above, DGFT has imposed the penalties on the assessees, but this Tribunal refrained from imposing penalty on the assesse, but in this case, the DGFT itself has dropped the proceedings against the appellants. Therefore, no penalty is warranted against the appellants.

9. In view of the above observations, I drop the penalties imposed on the appellants.

10. In the result, the appeals are allowed, quo imposing penalties on the appellants, with consequential relief, if any.

(Dictated and pronounced in the open court)

Sd/-

(Ashok Jindal)
Member (Judicial)

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