CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

REGIONAL BENCH - COURT NO. 02

Customs Appeal No. 85742 of 2013

(Arising out of Order-in-Appeal No. 135 dated 23.10.2012 passed by Commissioner of Central Excise & Service Tax (Appeals-IV), Mumbai-I)

M/s Safe Pack, **.....Appellant**
102, Ashiana,
11th Road, T.P.S. III,
Santacruz (E),
Mumbai-400055

VERSUS

Commissioner of Central Excise, **.....Respondent**
Thane - II
3rd Floor, Navprabhat Chambers,
Ranade Road, Dadar (West),
Mumbai-400028

Appearance:

Shri Vinay S.Sejpal, Advocate for the Appellant
Shri Dharmendra Singh, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87479 / 2019

Date of Hearing: 13.06.2019
Date of Decision: 13.06.2019

Per: S.K. MOHANTY

This appeal is directed against the impugned order dated 23.10.2012 passed by the learned Commissioner (Appeals), Central Excise & Service Tax, Mumbai.

2. Brief facts of the case are that the appellant is an EOU unit, engaged in manufacture of plastic disposable items, falling under Chapter sub-heading No. 3923.90 of the First Schedule to

the Central Excise Tariff Act, 1985. The appellant had availed the facility of 100% EOU Scheme as approved by the Secretariat of Industrial Approvals (Ministry of Industry) vide letter dated 23.07.2003 (LOP) for carrying out in bond manufacturing activity under Section 65 of the Customs Act, 1962. In terms of the said LOP issued by the Development Commissioner under the Ministry of Industry, the appellant had imported various capital goods without payment of customs duty for the purpose of manufacture and export of the finished goods outside India. The appellant had exported the goods of FOB value of Rs.9.01 Lacs for the year 2003-04, but did not achieve the export obligation due to recession in the international market. The appellant had applied for de-bonding of the project cover under the said LOP, which was in principle approved by the Development Commissioner vide letter dated 18.02.2005 for withdrawal from EOU Scheme. Subsequently, the appellant vide letter dated 24.03.2005 had approached the Development Commissioner, SEEPZ, for transfer of capital goods to the SEZ unit of M/s Indo Koya Import and Export Company located at Kandla Special Economic Zone. Necessary permission was granted vide letter dated 01.04.2005 by the Development Commissioner for such transfer of capital goods to the SEZ unit. Since, positive NFE was not achieved by the appellant as per paragraph (3) (d) (ii) of notification dated 31.03.2003, the Central Excise Department had initiated show cause proceedings against the appellant, which culminated into the adjudication order dated 31.03.2010, wherein duty demand of Rs.5.44 Lacs was confirmed along with interest and equal amount of penalty was imposed on the appellant under Section 112(a) of the Customs Act, 1962. On appeal, the learned Commissioner (Appeals) vide the impugned order date 23.10.2012 has upheld the adjudged demands confirmed on the appellant on the ground that the appellant had failed to achieve positive NFE and duty forgone proportionate to the ratio of unachieved NFE is required to be paid along with interest and penalty.

3. Heard both sides and perused the records.

4. In this case, the appellant had imported the capital goods without payment of duty under bond as per notification dated 31.03.2003. Paragraph 4 in the said notification provides that removal of the capital goods from the place of installation in the EOU can be done subject to fulfilment of the conditions/limitations imposed in the Export and Import Policy. It has also been provided that capital goods can be taken to any other unit in a Special Economic Zone or to other Export Oriented Undertaking etc., without payment of duty for the purpose of manufacture and export of the final product. Para-6.15(b) of the Foreign Trade Policy (FTP) provides for transferring of capital goods to another EOU / EHTP / STP / BTP / SEZ or disposed of in DTA on payment of duties. Further, Para-6.18 visualises the procedure for exit from EOU Scheme. Para-6.15 of the Hand Book of Procedure (HBP) provides that the supplies to other EOU/SEZ/EHTP/STP/BTP units shall be counted towards NFE, provided that such goods are permissible for procurement by these units. The procedure of exit of a manufacturing unit from the EOU Scheme is contained in para 6.18 in the FTP.

5. It is not the case of Revenue that the appellant had not complied with the above provisions laid down in the FTP and the HBP. Since, the capital goods were supplied by the appellant to the SEZ unit, duly approved by the Development Commissioner; the requirements of the Export and Import Policy have been duly complied with. Thus, the adjudged demands cannot be fastened on the appellant.

6. In view of above, the impugned order passed by the learned Commissioner (Appeals) cannot be sustained on merits. Accordingly, the same is set aside and the appeal is allowed in favour of the appellant.

(Operative part of the order pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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