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

REGIONAL BENCH - COURT NO. 02

Customs Appeal No. 86062 of 2018

(Arising out of Order-in-Appeal No. 146 & 147(EPCG)/2017(JNCH)/Appeal-I dated 08.12.2017 passed by Commissioner of Customs (Appeals-I), Mumbai - II)

M/s. Sudarshan Sulz Private Limited .....**Appellant**
G 260-61,IV Phase, RIICO Industrial Area,
Bwilwara – 311001,
Rajasthan

VERSUS

Commissioner of Customs, Nhava Sheva - IV .....**Respondent**
JNPT, Custom House, Nhava Sheva,
Raigad, Maharashtra - 400707

WITH

Customs Appeal No. 86061 of 2018

(Arising out of Order-in-Appeal No. 146 & 147(EPCG)/2017(JNCH)/Appeal-I dated 08.12.2017 passed by Commissioner of Customs (Appeals-I), Mumbai - II)

Shri Raj Kumar Melana, Director, M/s. Sudharshan Sulz Ltd. .....**Appellant**
G 260-61,IV Phase, RIICO Industrial Area,
Bwilwara – 311001,
Rajasthan

VERSUS

Commissioner of Customs, Nhava Sheva - IV .....**Respondent**
JNPT, Custom House, Nhava Sheva,
Raigad, Maharashtra - 400707

Appearance:
Shri T. Vishwanathan, Advocate for the Appellants
Shri Manoj Kumar, Authorized Representative for the Respondent

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

FINAL ORDER NO. A/87696-87697/2019

Date of Hearing: 06.07.2018
Date of Decision: 14.01.2019

Per: S.K. MOHANTY

Brief facts of the case are that the appellant herein is, *inter alia,* engaged in the manufacture of Textile Fabrics in its factory located at RIICO Industrial Area, Bhilwara. During the disputed period, the appellant had imported 'second hand sulzer projectile automatic shuttleless weaving machines' from M/s. Textile Trading Company, Harrisburg and M/s. Khodal Nigeria Ltd., Nigeria. The said goods were imported under Export Promotion of Capital Goods Scheme (EPCG). The appellant had claimed the benefit of concessional duty provided under the Notification No. 103/2009-Cus., dated 11.09.2009. Based on the intelligence that some of the Bhilwara based importers had imported the said goods by mis-declaring correct description of the machinery etc., the officers of customs preventive, Jaipur investigated into the matter and found that the appellant had procured the said goods under EPCG License by mis-declaring the description and others specification in the import documents; that the EPCG License was fraudulently obtained; short paid customs duty, equivalent to the duty forgone on import of the said machines. On the basis of investigation, show cause proceedings were initiated against the appellant and Shri Raj Kumar Melana, Director of the appellant company, proposing to denying the EPCG benefit and also for imposition of penalties on the said appellants. The matter arising out of the show cause notice dated 23.01.2015 were adjudicated vide order dated 21.03.2016, wherein the original authority had denied the benefit of concessional duty claimed by the appellant under Notification No. 103/2009-Cus., in respect of the imported machines; order for recovery of the differential duty of Rs.3,76,782/-; confiscated the seized goods under Section 111 (d), (m) and (o) of the Customs Act, 1962, with option to redeem the same on payment of redemption fine of Rs.13,00,000/-. Besides, the said adjudication order was also imposed penalties on the appellant company under Section 114 A and 114 AA *ibid* and on the Director under Section 112 (a) and 114 AA *ibid.* On appeal, the learned Commissioner (Appeals) vide the impugned order dated 08.12.2017 has allowed the exemption benefit and upheld the adjudication order by rejecting the appeals filed by the appellant, holding that the capital goods had liable for confiscation under Section 111 (m) and penalties are correctly imposed on the appellants. Feeling aggrieved with the impugned order, the appellants have preferred these appeals before the Tribunal.

2. The learned Advocate appearing for the appellants submitted that there is no mis-declaration of goods and the appellants had filed the proper documents in respect of the subject machines imported by the appellant company. Thus, it is contended that the provisions of Section 111 (m) *ibid* cannot be invoked for confiscation of imported goods and for imposition of penalties on the appellants. He further submitted that the appellant company had fulfilled the entire export obligation and the EPCG License was duly redeemed on submission of export obligation discharge certificate. Accordingly, the learned Advocate contended that there is neither mis-declaration of goods nor evasion of duty and as such, fine and penalties cannot be imposed on the appellants. The learned Advocate has relied upon the following judgments to strengthen the case of the appellant that the impugned order passed by the learned Commissioner (Appeals) cannot be sustained:-

1. *Titan Medical Systems Vs. CC, New Delhi – 2003 (151) ELT 254 (S.C.)*
2. *Autolite (India) Ltd. Vs. Union of India – 2003 (157) ELT 13 (Bom.)*
3. *Steel Authority of India Vs. CC, Calcutta – 2001 (136) ELT 316 (Tri.)*
4. *Soni Ispat Limited Vs. Commissioner of Customs, Nhava Sheva - 2007 (217) ELT 274 (Tri.)*

3. On the other hand, the learned AR appearing for the Revenue reiterated the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. The question involved in these appeals for consideration by the Tribunal is as to whether, the findings of the learned Commissioner (Appeals) in holding that the looms imported under the EPCG Scheme are liable for confiscation under Section 111 (m) *ibid* or not? In support of the impugned order, the learned Commissioner (Appeals) has held that the model number of the imported machine was mis-declared in the Bill of Entry by the appellant.

6. The description of disputed goods appearing in the application filed before DGFT, in the EPCG License and in the Bill of Entry dated 03.02.2010 is mentioned herein below:-

In Application for issuance of EPCG	**In EPCG License**	**In the bill of entry no. 881848 dated 03.02.2010**
6 set second hand sulzer projectile automatic shuttleless weaving machine with standard accessories	6 set second hand sulzer projectile automatic shuttleless weaving machine with standard accessories	Second hand sulzer projective automatic shuttleless weaving machine model P7150 B390 N2 SP DI, with stavbli dobby, 2 CO

7. In this case, the value of imported looms and the classification adopted by the appellant company is not in dispute. The benefit of exemption under EPCG Authorization claimed by the appellant has been found to be in order by the learned Commissioner (Appeals). Section 111 (m) *ibid* provides for confiscation of imported goods, in case the said goods do not correspond to value or any other material particulars declared in the Bill of Entry. In the case in hand, the appellant had declared the description of model number based on the certificate issued by the Chartered Engineer. Thus, under such circumstances, it cannot be said that there is mis-declaration of goods mentioned

by the appellant in the import documents. At best, the mis-match in the description of goods could be termed as wrong declaration, for which the provisions of Section 111 cannot be invoked for confiscation of the imported goods. Further, it is not the case of Revenue that the appellants did not fulfil the export obligation provided under the Licensing Policy. Admittedly, in this case, the exports made by the appellant were accepted by the Office of DGFT and to that effect, the export obligation discharge certificate dated 30.09.2016 was issued by the competent authority. It is a settled principle of law in the case law compilation submitted by the learned Advocate that once license is issued and not questioned by the licensing authority, then the same cannot be questioned by the customs authorities. In this case, the department had not categorically pleaded that there is any involvement of *mens rea* in wrong mention of the model number of the imported goods by the appellant, with the intent to defraud the Government Revenue. Hence, I am of the considered view that the redemption fine and penalties cannot be imposed on the appellants.

8. In view of the foregoing discussions, I do not find any merits in the impugned order passed by learned Commissioner (Appeals). Therefore, by setting aside the same, the appeals are allowed in favour of the appellants.

(Order pronounced in the open court on 14.01.2019)

(S.K.Mohanty)
Member (Judicial)

HK