CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 02

Customs Appeal No. 804 of 2009

(Arising out of Order-in-Original No. S/10-149/97 dated 07.01.99 passed by Commissioner of Customs, Jawahar Custom House, Nhava Sheva, Raigad)

Apurva Industries **......Appellant**
886, GIDC Makarpura
Vodadara - 390 010.

VERSUS

Commissioner of Customs (Import), Nhava Sheva. **.....Respondent**
Jawaharlal Nehru Custom House,
Post Uran, Dist – Raigad,
Sheva – 400 707.

Appearance:

None Advocate for the Appellant
Ms. Trupti Chavan, 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/86110/2020

Date of Hearing : 13.03.2020
Date of Decision :13.03.2020

PER : S.K. MOHANTY

None appeared for the appellant, despite issuance of notice by the Registry. Heard the learned AR for Revenue.

2. Brief facts of the case are that the appellant herein, had imported the disputed goods duty free under Notification No. 203/92-Cus., dated 19.05.1992 against the Advance Licence procured from one M/s. Hap International. In order to be entitled for the benefit of duty free imports under the said exemption notification, the export obligation was required to be discharged by exporting the goods manufactured in India, on which no input stage credit was availed under Rule 56A or Rule 57A of the erstwhile Rules, 1944. The case of the department is that the appellant had availed the input stage modvat credit, which was in violation of provisions of para 126 of the Handbook of Procedures laid down in the EXIM Policy 1992-97 read with the Notification dated 19.05.1992. Accordingly, the department had initiated show cause proceedings against the appellant for confirmation of the duty demand along with interest and for imposition of penalties. The matter was adjudicated vide the impugned order dated 07.01.1999 in confirming the proposed demand against the appellant.

3. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal. The appellant had *inter alia*, contended that no input stage credit was availed by it and that since the licensing authority had permitted for transfer of the Advance Licence by the original licence holder, the adjudged demands cannot be fastened on the appellant by the Customs Authorities. In support of the said submissions, the appellant has relied upon the decision of the Larger Bench of this Tribunal, in the case of Hico Enterprises Vs. Commissioner of Customs, Mumbai, reported in 2005 (189) ELT 135 (Tri. LB).

4. It is an admitted fact on record that the Advance Licence was issued by the office of DGFT in favour of M/s. Hap International, which was transferred in favour of the appellant for procurement of the duty free imported goods. On perusal of the case records, it transpires that the appellant had not availed any Modvat Credit in respect of the goods imported by it. It is also not the case of

Revenue that the Advance Licence was fraudulently obtained by the appellant. Since the said licence was transferred by the original licencee to the appellant under the confirmation of the office of DGFT, availment of Modvat Credit by the transferor cannot be questioned subsequently by the Customs Authorities for denying the benefit of the duty exemption to the appellant. We find that the identical issue had been considered by the Larger Bench of this Tribunal in the case Hico Enterprises (supra), holding that endorsement of valid licence by the competent authority i.e. DGFT cannot be questioned by the Customs Authorities, in absence of any provisions contained in the exemption notification. We also find that the Civil Appeal filed by Revenue against the said Larger Bench decision was dismissed by the Hon'ble Supreme Court. Hence, we are of the considered view that the issue arising out of the present dispute is no more *res integara*.

5. In view of the above, we do not find any merits in the impugned order. Accordingly, by setting aside the same, 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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