

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No. 4**

Customs Appeal No. 85526 of 2020

(Arising out of Order-in-Appeal No. CAC-JNCH-000-APP-019-2020 dated 17.02.2020 passed by the Commissioner of Customs (Appeals), Mumbai-II)

M/s. Shoe World (Bajwa) Exports

Appellant

D-46, Site-C, UPSIDC Industrial Area,
Sikandara, Agra 282 007/

Vs.

Commissioner of Customs, Nhava Sheva-II

Respondent

JNPT, Custom House, Nhava Sheva, Raigad 400 707.

Appearance:

Ms. Rinki Arora, Advocate, for the Appellant

Shri Deepak Sharma, Assistant Commissioner, Authorised
Representative for the Respondent

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 13.10.2023

Date of Decision: 31.10.2023

FINAL ORDER NO. 87070/2023

Brief facts relevant for disposal of this appeal are that the appellant is manufacturer and exporter of polyurethane polyvinyl chloride soles of footwear. During the year 2011, appellant was issued with two Zero Duty EPCG Licences on 19.07.2011 and 03.08.2011 involving foregone customs duty of Rs.15,29,559/-. Appellant was also issued with three Status Holder Incentive Scheme (SHIS) Licences on 09.03.2011, 06.05.2011 and 23.05.2013. On 05.06.2012, para 5.1(f) of Foreign Trade Policy 2009-2014 was amended to the effect that if an exporter avails the benefit of SHIS in a particular year, then during that year the same exporter shall not be eligible to avail the benefit of Zero Duty EPCG Scheme. Further, Chapter 3.10.3(b) of Handbook of Procedures provided that in case an applicant has availed Zero Duty EPCG Authorisation during the year 2010-11 or 2011-12 or 2012-13, they shall not be entitled to SHIS for that year (i.e. for

export made during the respective previous years) and such SHIS applications should be summarily rejected. It appeared to Revenue that the appellant has simultaneously availed SHIS scheme and Zero Duty EPCG Scheme by suppressing the information of availment of SHIS Scheme in ANF 5A form at para 4B and, therefore, the customs duty foregone with respect to Zero Duty EPCG Licence should be recovered from the appellant. Therefore, a show cause notice dated 23.02.2016 was issued to the appellant by extending normal period of limitation demanding recovery of customs duty of Rs.15,29,559/-. There were other proposals for imposition of penalty. On contest, the original authority confirmed the demand and taken Public Notice No. 30/2015-20 dated 08.09.2016 issued by Directorate General of Foreign Trade into consideration wherein at Para E there was a suggestion not to take penal action and did not impose penalty. Appellant preferred appeal before learned Commissioner (Appeals). Learned Commissioner (Appeals) upheld the order passed by the original authority. Aggrieved by the said order, appellant is before this Tribunal.

2. Learned counsel for the appellant has submitted that the provisions of para 5.1(f) of Foreign Trade Policy stated in the show cause notice are as on 05.06.2012 and as on 05.06.2012, para 4B of ANF 5A was added which contained a declaration that the appellant has not availed and shall not avail the benefit of Status Holder Incentive Scheme in the year of application and such para 4B was not provided for in ANF 5A form for the period prior to 05.06.2012 and the appellant had filed all the ANF 5A before 05.06.2012 and, therefore, since there was no such para 4B in the proforma, appellant had never declared that they were not simultaneously availing the benefits of two schemes. Therefore, the contention in the show cause notice that the appellant had misdeclared and suppressed information is factually not correct. Learned counsel for the appellant has further argued that during 2011-12 when appellant took the benefit of both the schemes, there was no such restriction that the benefit of two schemes cannot be simultaneously availed and

restriction not to simultaneously avail the benefit of two schemes was introduced with effect from 05.06.2012 and the present dispute is for the period prior to 05.06.2012 and that the provisions that were made applicable after 05.06.2012 cannot be applied in the present case. Learned counsel for the appellant has also brought the attention of the court to the Public Notice dated 08.09.2016 referred to by the original authority. She stated that in para E of the said public notice, it has been accepted by the authorities that it was decided in consultation with the Department of Revenue that any erroneous issuance of SHIS and Zero Duty EPCG Licence will be considered bonafide error. Learned counsel for the appellant has submitted that the appellant has complied with all the provisions as they existed during the material time and there was no malafide on the part of the appellant. Therefore, the allegation of suppression in the show cause notice is not sustainable.

3. Learned AR has supported the impugned order.

4. I have carefully gone through the record of the case and submissions made. The first and foremost thing I find is that the duty foregone into Zero Duty EPCG Licences was demanded through the show cause notice. Both the licences were issued before 05.06.2012. I find that before 05.06.2012, there was no requirement of giving an undertaking under para 4B of ANF 5A form. Therefore, I hold that the allegation of suppression in the show cause notice is not proved. I have also gone through the Public Notice dated 08.09.2016. Further, the original authority has accepted the contents of the said public notice and dropped the proposals for imposition of penalties. I, therefore, do not find any irregularity on the part of the appellant for Revenue to recover customs duty of Rs.15,29,559/- under extended period of limitation.

5. I, therefore, set aside the impugned order and allow the appeal.

(Order pronounced in the open court on 31.10.2023)

(Anil G. Shakkarwar)
Member (Technical)

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