

(2012) 07 P&H CK 0214**High Court Of Punjab And Haryana At Chandigarh****Case No:** C.W.P. No. 12611 of 2012

Ess Kay International

APPELLANT

Vs

Commissioner of Customs

RESPONDENT

Date of Decision: July 16, 2012**Citation:** (2013) 289 ELT 299**Hon'ble Judges:** Gurmeet Singh Sandhawalia, J; Ajay Kumar Mittal, J**Bench:** Division Bench**Advocate:** Deepak Gupta, for the Appellant; Jagmohan Bansal, for the Respondent**Judgement**

@JUDGMENTTAG-ORDER

Ajay Kumar Mittal, J.

The petitioner herein impugns the order dated 21-5-2012, Annexure P. 4 passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi (in short, "the Tribunal") whereby it has been required to deposit the whole amount of duty i.e. Rs. 8,08,572/- as a condition precedent for hearing the appeal by the Tribunal. Briefly, the facts as narrated in the petition may be noticed. The petitioner is a Proprietorship concern, having its office at Amritsar. It is engaged in the manufacture and export of Blankets and Shawls. It imported acrylic fibre under Advance licence No. 21313 dated 20-1-1998. The goods were imported without payment of customs duty with a condition that resultant product i.e. Shawls and blankets shall be exported. On 27-5-1999, the export consignment of 305 bales of the petitioner was allowed to be exported after examination by the Customs CFS, Chheharta. On 2-6-1999, the said export consignment of the petitioner was re-examined by Headquarters (Anti Smuggling) Staff, Amritsar. After reexamination, the goods were allowed to be exported on provisional basis. On the basis of test report, it was found that the goods exported by the petitioner were not composed of 100% acrylic and so it was liable to pay duty on goods imported without payment of duty. Show Cause Notice dated 23-7-2002 was issued to the petitioner. The petitioner submitted reply to the notice. The adjudicating authority confirmed the

demand of Rs. 8,08,572/- and also imposed fine of Rs. 2 lacs and penalty of Rs. 1 lac (Annexure P. 1). Aggrieved by the order, the petitioner filed an appeal before the Commissioner (Appeals) who upheld the order passed by the adjudicating authority and dismissed the appeal vide order dated 6-1-2009, Annexure P. 2. The petitioner filed second appeal before the Tribunal alongwith stay application. The Tribunal vide impugned order dated 21-5-2012, Annexure P. 4 directed the petitioner to deposit the whole amount of duty demanded i.e. Rs. 8,08,572/- within six weeks as a condition precedent for hearing the appeal. Hence this petition.

2. Learned counsel for the petitioner submitted that the Tribunal had erred in not waiving the duty before hearing the appeal in the facts and circumstances of the case. According to the learned counsel, the financial position of the petitioner was not good and in such a situation, great hardship would be caused to the petitioner in case it is required to deposit the demand of duty of Rs. 8,08,572/-.

3. After hearing learned counsel for the petitioner and perusing the record, we do not find any merit in the writ petition.

4. The goods which were for export were provisionally released on the request of the petitioner subject to test report of CRCL, New Delhi. The Tribunal noticed that the CRCL report was against the petitioner and it remained unimpeached from the adjudicating process. It was in such circumstances that the petitioner was required to deposit amount of Rs. 8,08,572/- as a condition precedent for hearing the appeal. No illegality or perversity could be pointed out in the impugned order warranting interference by this Court. The petition is dismissed. However, any observation made herein shall not be treated to be expression of opinion on the merits of the controversy. Learned counsel for the petitioner prayed for extension of time. Accordingly, the time is extended by four weeks from today. It is clarified that in case the petitioner deposits the amount as directed by the Tribunal within four weeks from today, the appeal shall be heard on merits in accordance with law.