(2010) 11 P&H CK 0620

High Court Of Punjab And Haryana At Chandigarh

Case No: CEA No. 45 of 2004

Commissioner, Central Excise	APPELLANT
Vs	
PML Industries Ltd.	RESPONDENT

Date of Decision: Nov. 9, 2010

Acts Referred:

- Central Excises and Salt Act, 1944 - Section 35G

Hon'ble Judges: Ajay Kumar Mittal, J; Adarsh Kumar Goel, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Adarsh Kumar Goel, J.
This order will dispose of CEA Nos. 45 of 2004 and 96 to 104 of 2010 as in all the appeals common questions are involved.

2. CEA No. 45 of 2004 has been filed by the revenue u/s 35G of the Central Excise Act, 1944 (in short "the Act"), against order dated 18.6.2004 passed by the Customs, Excise & Service Tax Appellate Tribunal (hereinafter referred to as "the Tribunal") proposing to raise following substantial questions of law :

(i) Whether the Tribunal''s conclusion that on the very same issue of export obligation the Customs Authorities and DGFT are undertaking parallel proceedings and reaching opposite findings is not to be done/allowed, is correct in law in view of the fact that the two authorities act independent of each other in terms of statutory powers vested in them under two separate enactments, namely, under the Customs Act, 1962 and the Foreign Trade (Development & Regulation) Act, 1992?

(ii) Whether the conclusion of the Tribunal that customs authorities can initiate action for recovery of Customs/Central Excise duty only upon a finding of the DGFT regarding non-fulfillment of export obligation is legally sustainable in light of the CBEC Circular issued from F. No. 307/5/97-FTT dated 6.8.1997 which clearly

stipulates that action for demand of duty by the Customs Authorities can be initiated without waiting for a reference from the Jurisdictional Development Commissioner?

(iii) Whether the Tribunal is correct in granting dual benefit of exports to the parties by ignoring the procedural requirements which are statutory in nature?

3. The Assessee is 100% export oriented unit registered under the Excise Department and is manufacturing Buffalo meat. It imported capital goods by availing exemption without payment of customs duty under notification dated 9.2.1981. Show cause notice was issued by the Excise Department alleging violation of availment of exemption without complying with the prescribed conditions for grant of exemption. After adjudication vide order-in-original dated 30.10.1999 demand of duty was confirmed and duty free imported goods were confiscated apart from other penal action. The said order was, however, set aside on appeal by the Tribunal holding that Excise Department and Foreign Trade Department could not simultaneously proceed in the matter. It was further held that on merits, there was no violation of the conditions for exemption.

4. We have heard learned Counsel for the parties and perused the record.

5. Learned Counsel for the revenue submits that the Tribunal erred in holding that parallel proceedings by the Excise Department and the Foreign Trade Department could not be initiated. Scope of both the proceedings was different. The Foreign Trade Department was taking action in the capacity of licensing authority while the Excise Department was exercising jurisdiction to recover statutory dues and take action for default in that connection. Reliance has been placed on the judgment of Hon''ble Supreme Court in Sheshank Sea Foods Pvt. Ltd., Karnataka Vs. Union of India (UOI) and Others, and judgment of this Court in Rajinder Arora v. Union of India 2006 (206) ELT 1190 (P&H).

6. Learned Counsel for the Assessee submits that though the finding of the Tribunal on the issue of maintainability of the proceedings may be erroneous, the Tribunal has also recorded the finding on merits in favour of the Assessee relying upon order of the Development Commissioner, Department of Foreign Trade. The said finding is as under :

4. The very first submission of PML is that the Appellant''s export obligation was in terms of the approval granted by the Directorate/General of Foreign Trade (DGFT) and that authority has accepted the Appellant''s claim that the machinery have been part to production and the products exported through the three parties M/s Agrico Foods Pvt. Ltd., M/s Allana Investment and Trading Co. and M/s Frigario Conserva Allana Limited. During the hearing of the case, Appellant has placed on record order dated 14th November 2002 passed by the Development Commissioner, Noida Export Processing Zone accepting the performance of export obligation. The Appellant points out that the acceptance of export obligation by the DGFT has knocked the bottom out of the charge to the contrary confirmed in the impugned

order. Learned Senior Counsel for the Appellant also pointed out that contrary to the findings in the impugned order (that there was no export by PML and that the clearances to their buyers should be taken as domestic sales) the customs authorities are now accepting that the Appellant''s sales to three parties could be treated as export and that they are only disputing the actual figure of export as found by the DGFT. Reference in this connection has been made to letter dated 24.10.2003 of Asstt. Development Commissioner, Noida and Appellant''s reply dated 19.12.2003.

5. On merits also, the Appellant has contended that the findings are not sustainable on available facts. It is being pointed out that according to the Revenue itself, Appellant''s production was being clear to the three parties'' who transported the buffalo meat to the export warehouse of Allana Investment and Trading Co. and thus, there is no evidence that the goods were being sold for domestic consumption. It is further pointed out that the Appellant had produced shipping bills in support of its claim that the goods sold to the three parties were exported from Mumbai Customs approved warehouse. However, these documents were erroneously rejected by the Commissioner mostly on the ground that the shipping bills did not contain the name of PML. The sales to the three parties were also not accepted as export sales on the ground that they were not authorized parties under the Export Policy. The Appellant has pointed out that these parties are Export Houses/Star Trading house and that they are entitled to export of products of EO Us. It is further being pointed out that this arrangement of export through third parties was in the knowledge of the Development Commissioner (Export) and the Development Commissioner accepted those export through them as qualifying for satisfying the export obligation of the Appellant.

7. No question has been raised with regard to the said finding.

8. In view of finding recorded by the Development Commissioner and the Tribunal on merits holding that the Assessee did not violate the conditions for availing the exemption from customs duty, which has not been challenged by the revenue, the questions raised on behalf of the revenue cannot be held to be substantial questions of law and need not be gone into.

9. Accordingly, the appeals are dismissed.