

M/S Rattan Exports Ltd., Delhi

Vs

Collector of Customs, Calcutta

Civil Appeals Nos. 4352-53 of 1986

(Ranganath Misra, M. M. Dutt JJ)

11.08.1987

JUDGMENT

RANGANATH MISRA, J. -

1. These are two appeals by the same appellant under section 130-E(b) of the Customs Act, 1962 and are directed against two separate appellate orders of the Customs, Excise and Gold (Control) Appellate Tribunal, dated 31-10-1986 upholding the order of confiscation of the goods ----- under Section 111(d) and the direction of release of the goods on payment of redemption fine of ---- --Rs. 6,50,000/- in one case and Rs. 10,20,000/- in the other, fixing liability of duty under the Act and levying a fine of Rs. 1,00,000/- and Rs. 1,20,000/- respectively under section 112 of the Customs Act.

2. The union Government came out with Duty Exemption Scheme for export promotion activities. As far as relevant, for the purposes of these appeals, the following were the essential features of that Scheme :

3. Applications were to be entertained for the grant of advance license with benefit of Customs duty exemption. The Scheme would apply only to those export products in which there is a minimum value added of ----25%. Wherever, it is considered necessary, Advance Licensing Committee may relax the condition regarding 25% value addition. The Scheme also extended the benefit of duty exemption in regard to imports of raw material under certain stipulations and the entire imported raw material was to be used for manufacturing of the goods to be exported under the Scheme.

4. The Customs Authorities found that to obtain the benefit of the concessions under the Scheme, the materials required to be imported for the purpose of manufacture of goods or replacement of the materials used in the manufacture of the goods and or both were to be raw materials and what the appellant had been importing were indeed finished good and therefore the benefit of the Scheme was not available. The import was not entitled to exemption from duty and the infraction called for action under section 111 and 112 of the Customs Act.

5. At the hearing, one of the imported 'attache cases' was produced to demonstrate the condition in which the alleged raw material was being imported. We found that excepting the locks and the handle all the other fittings were complete. There is hardly scope to argue for acceptance of a view different from what has been taken by the departmental authorities or the Tribunal. The finding that there has been a violation can be interfered with.

6. Learned counsel for the appellant then submitted that there should be reduction both in the fine as

also the redemption fine. The appellant has a subsisting contract for export of the goods to the USSR and the entire imported articles are intended for export after treatment of the imported material. Therefore, the benefit of exemption from duty also should be extended. We have heard counsel for the respondent on this score.

7. A total penalty of Rs 2,20,000/- has been levied under section 112 and the redemption fine has been fixed at Rs 16,70,000/- under Section 111(d) of the Act. The demand on both scores appears to be excessive. Keeping the facts the circumstances of the case in view, we direct the penalty to be reduced to Rs 25,000/- as against Rs 1,00,000/- and Rs 30,000/- as against Rs 1,20,000/-. Similarly, the redemption fine imposed under section 111(d) is reduced to Rs 2,00,000/- as against Rs 6,50,000/- and Rs 2,50,000/- as against Rs 10,20,000/-. Counsel for the appellant has made a solemn statement before us that the entire imported goods would be utilised for export under the existing contract. In case this undertaking really works out then the appellant should be entitled to exemption from duty under the Scheme. In case the appellant works in terms of the undertaking, he would not be liable to duty in regard to the import made; otherwise duty as leviable under the Act shall be payable. The appeals are disposed of with the aforesaid directions. No costs. The appellant undertakes to pay the fine and the redemption fine within six weeks.

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