SUPREME COURT OF INDIA

M/s. Wazir Chand and Co. Pvt. Ltd.

Vs.

Commissioner of Customs, New Delhi

C.A.No.7558 of 1996

(Brijesh Kumar and P.Venkatarama Reddi JJ.)

20.01.2004

JUDGMENT

P. Venkatarama Reddi, J.

1. In this appeal under Section 130-E of the Customs Act, 1962 the order of CEGAT, North Regional Bench, New Delhi, upholding the demand of customs duty of Rs. 9,34,514 with interest @ 18% and penalty of Rs. 40,000 has been impugned.

2. The appellant applied for Import-Export Passbook Licence for the import of brass scrap of 89.744 MTs of the CIF value of Rs. 13,06,974 for the purpose of exporting the resultant product manufactured out of it, namely, brass artwares (handicrafts) of the FOB value of Rs. 32,67,436. Under the column 'quantity to be exported' the appellant mentioned 'as per value'. Serial No. and appendix of import policy was mentioned as 'appendix 25, H.1'. In the declaration, it was made clear that the quantities and value of the items sought for import are actually required for the manufacture of the export product.

3. The Assistant Chief Controller of the Imports and Exports granted the licence on 7.6.1988 and issued a passbook. The details relating to the description of goods, the quantity and value of brass scrap to be imported and the value of the exports are mentioned in the licence as per the application. In column 6 of the licence, the limiting factor for purposes of the clearance through Customs is stated to be - 'quantity and value both'. In condition 6 appended to the licence, it is specified "the goods permitted for import against this licence will be eligible for exemption from customs duties subject to the conditions specified in the relevant notification of the Government of India, Department of Revenue".

4. The appellant imported, free of duty, quantities of brass scrap during the period October, 1988 and August, 1989. Within the period allowed, he also exported brass artwares made out of imported raw material to the extent of FOB value of Rs. 32,57,415 under ten shipments.

5. On 11.1.1991, the Additional Collector of Customs, New Delhi issued a show cause notice as to why Customs duty to the extent of Rs. 9,34,514 with interest thereon should not be

realized by reason of the failure to export 36,105 kgs. of finished goods. The said quantity has been arrived at by deducting the quantity exported (27,799 kgs.) from the quantity of raw material imported (63,904 kgs.). Customs duty was demanded on the value of the differential quantity of 36,105 kgs. The Additional Collector referred to the following conditions (f) and (g) of the notification No. 117/88-Cus. dated 30.3.1988. (f) That the said imported good shall be used for the purpose specified in this notification. (g) That the said imported goods or any portion thereof shall not be sold or loaned or otherwise transferred to any other person or utilized or permitted to be utilized or disposed of for any other purpose.

6. The conditions are in tune with para 281 of the Imports and Exports Policy, 1988.

7. In reply to the show cause notice, the appellant took two fold stand: (i) that the export obligation has been fulfilled with the exportation of brass artware of the FOB value of Rs. 32,67,436 as borne out by the entries in the passbook; (ii) the entire raw material imported was utilized in the manufacture of exported goods and no quantity was sold or disposed of contrary to the terms of the notification or the policy. The appellant clarified that it refrained from getting further endorsements in the passbook after the export to the extent of Rs. 32,57,415 was reached, but the export of the resultant product continued even thereafter. It was also clarified that the exported quantity was to the tune of 58,186 kgs and the balance of 5,717 kgs was on account of wastage. Before the adjudicating authority the appellant filed the details of exported products supported by a certificate from the concerned official of the Company. Reference was made to 42 shipping bills as against 10 shipping bills mentioned in the show cause notice/passbook. The adjudicating authority rejected these contentions and held that the benefit of exemption under the notification cannot be availed of by the appellant. The adjudicating authority also levied penalty of Rs. 1 lakh under Section 112-A read with Section 111-O of the Customs Act.

8. On appeal to the Tribunal, the order of the Additional Collector, Customs was upheld subject to the reduction of penalty to Rs. 40,000. The Tribunal, after referring to para 271(2) of the 1988-91 Policy, took the view that the passbook was not issued in terms of Appendix 14-A but it was in terms of Appendix 14-C and therefore the export obligation will have to be fulfilled both in terms of quantity and value. The Tribunal also held that the appellant had not been able to specifically account for utilization of the quantity of 36,104 kgs and therefore the condition in the notification (117/88) was breached.

9. In our view, the Tribunal misdirected itself in proceeding to consider at length the question whether licence was issued under Appendix 14-A. In dealing this aspect the Tribunal had apparently in view para 271(2) which reads as follows:

> "(2) In cases where the Pass Book has been issued as per the import entitlement rate given in Appendix 14-A, the export obligation will have to be fulfilled in terms of value only. In other cases, the export obligation shall have to be fulfilled both in terms of quantity and value."

> We find that the doubt entertained by the Tribunal in this regard is wholly unfounded apart from being extraneous to the issue which the Tribunal was called upon to consider. In part 3 of the application for licence, Appendix 25-H.1 is mentioned. It is not in dispute that this Appendix became 14-A in the succeeding import policy which came into force by the time the licence was issued. H.1 is the description of export products, viz., handicrafts of aluminum, brass etc. This item is common to both the policies. In Appendix 14-A, corresponding to 25, the import entitlement percentage in respect of each export product is given. According to para 259(1), imports against the passbook will be allowed to the extent of import entitlement as specified in Appendix 14-A to the policy. The basis of working out the import eligibility is laid down thereafter. It is stated therein that the maximum import entitlement would be worked out by applying the relevant import entitlement rate of Appendix 14-A on the 'base exports'. There is absolutely no basis to hold that the licence was issued otherwise than in accordance with para 259(1) read with Appendix 14-A which appendix was in force by the time the licence was issued. The observation that the licence was issued in terms of Appendix 14-C is wholly misconceived. Appendix 14-C is a list of sensitive items which includes brass scrap. According to para 261(2) "for items appearing in Appendix 14-C, a certificate certifying the actual requirement of the items in the export product from the concerned Chartered Engineer will have to be produced along with the application". Thus, Appendix 14-C is not a licensing provision but a provision which requires the applicant to furnish a certificate. It is unnecessary to embark on an enquiry whether before the licence was issued such certificate was produced.

10. We have said all this only to highlight that the distinction sought to be made by the Tribunal between the so called 14-A licence and 14-C licence is erroneous. The crucial question to which the Tribunal should have addressed itself is whether the raw material imported duty free was utilized in the manufacture of exported products. In this regard, the definite case of the assessee, as put forward in the reply to the show cause notice and the documents placed before it or the adjudicating authority should have been examined. Instead of that, the Tribunal made a bald observation that the appellant could not specifically account for utilization of the balance quantity of 36,104 kgs. Neither the case of the assessee, nor the supporting material produced by it was referred to by the Tribunal before reaching this conclusion. True, the adjudicating authority did not accept the appellant's contention in this regard. But, even the adjudicating authority had not gone into all the relevant aspects. The case was rejected merely on the basis of endorsements in the passbook and the alleged discrepancy of 500 kgs in Sl. No. 3 of the statement. That the balance sheet did not contain details of utilization is another point noted. It has been commented by the learned counsel for the appellant that the discrepancy was explained before the Tribunal and it was further contended that the balance sheet need not reflect necessarily the details regarding utilization of raw material and the purpose of furnishing the balance sheet was only to show that there were no domestic sales. We need not dilate on these aspects. We consider it a fit case to remand the matter to the Tribunal for examining the issue whether there is satisfactory proof of utilization of the entire raw material for the purpose of exporting the resultant products. The Tribunal may, in addition to the material already filed, take into account any other

material furnished by the parties. In the light of the conclusion arrived at by the Tribunal on this crucial aspect, the appeal shall be disposed of by the Tribunal. It is desirable that the appeal is decided expeditiously as the litigation has been lingering for well over ten years.

The appeal is allowed accordingly without costs.