

SUPREME COURT OF INDIA

Commissioner of Customs (Imports) Bombay

Vs.

Hico Enterprises

C.A.No.2418 of 2006

(Dr.Arijit Pasayat,. P. Sathasivam and Mukundakam Sharma JJ.)

29.04.2008

JUDGMENT

Dr.Arijit Pasayat, J.

1. Heard.
2. Challenge in this appeal is to the order passed by Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench, Mumbai (in short 'CESTAT') allowing the appeal filed by the appellant.
3. Background facts in a nutshell are as follows:

“Appellant acquired and/or purchased transferable Value Based Advance Licenses (in short 'VABAL') including a License dated 19.1.1993 issued in the name of M/s. Amar Taran Exporter, New Delhi. Same was purchased, on 20.4.1994. Appellant on the basis of that imported consignment vide Bill of Entry No. 881 dated 30.3.1994. Same was allowed duty free allowance. By show cause notice dated 04.03.1999 appellant was called upon to show cause why an amount of Rs. 16,74,702/- could not be recovered and demanded in terms of proviso to Section 28(1) of the Customs Act, 1962 (in short the 'Act') for alleged contravention of certain conditions of Notification No. 203/92-Cus dated 19.05.1992. Noticee denied the allegations. However, Commissioner of Customs (Import) confirmed the demand along with interest and penalty of Rupees One lakh. Same was held to be jointly payable by the original license holder and licensee. It was held that goods were liable in confiscation under Section 111 of the Act. As the goods were not available penalties of Rs. 3 lakhs and Rs. 1 lakh were levied under Section 112(a) of the Act.”

4. In view of divergence of views, the matter was referred to a larger Bench of the Tribunal.
5. The Tribunal inter alia held as follows;

“Hence, the satisfaction arrived at in the above manner is final and binding on the customs department. The customs department cannot compel the appellants importer, who are the transferee, to once again prove that the export obligation has been fulfilled by the original licence-holder in accordance with the notification and without availing input stage credit.”

The transferee cannot be called upon to fulfill the condition (v) (a) of the Notification No. 203/92-Cus. It is the original licensee, who has to satisfy the above referred condition, but not the transfers of the licence. In the result the reference is answered accordingly.

6. In this appeal challenge is to the aforesaid conclusions. Learned Counsel for the respondent pointed out that no role was ascribed to it in the show cause notice.

7. It is seen that in view of the fact that in the show cause notice issued on 4.3.1999, there was no reference to the alleged infraction of M/s. Amar Taran Exports, the transferor of the license in question, the judgment of the CESTAT does not suffer from any infirmity to warrant interference. The appeal is dismissed.