(2014) 10 CESTAT CK 0008

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 622, 623 Of 2006

CC, Jodhpur APPELLANT

Vs

Art Asia Sankalp International RESPONDENT

Date of Decision : 22-10-2014

Acts Referred:

Citation : (2014) 10 CESTAT CK 0008

Hon'ble Judges : Archana Wadhwa, J;Rakesh Kumar, Technical Member

Bench : Division Bench

Advocate : Amresh Jain, O.P.Agarwal

Final Decision : Dismissed

Judgement

1. A very short issue is involved in the present two appeals of the Revenue, which stands filed against the impugned orders of Commissioner

(Appeals).Â Both appeals are being disposed of by a common order.

2. After hearing both the sides, we find that the respondent is engaged in the manufacture and export of handicraft furniture. For the said purpose they

imported Polishing Material viz Stain Lacquer, Patina and Natural Wax, on payment of Concessional rate of duty as also at NIL rate of duty under

Notification No. 21/2002-Cus dated 1.3.2002. The said Notification allows importation of various inputs to be used in the manufacture of Handicraft to

be exported.

3. Admittedly, the appellant have utilized the said material in the manufacture of the furniture, which stands exported by them. The only dispute in the

present appeals is as to whether the said furniture exported by the appellant would be considered as handicraft or not. As per the appellant the same

was handicraft furniture whereas as per the revenue, the furniture was is simple

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furniture. Accordingly, Revenueâ??s entertained a view that the

benefit of the concessional rate of duty was not available to the respondents for importation of the raw-material, which were to be used only in the

manufacture of handicrafts.

4. Accordingly, proceeding initiated against them resulted in passing of the impugned order by the original adjudicating authority, confirming the

demand alongwith interest and imposition of penalties. The said order of the original adjudicating authority was said aside by Commissioner (Appeals).

Hence, the present appeals by the Revenue.

5. After appreciating the arguments advanced by both the sides and after going through the impugned order of Commissioner (Appeals), we find that

the appellant authority has mainly relied upon condition No. 12(a) of the Notification, which stands fulfilled by the Respondent. We reproduce the said

condition:-

â??If, (a) the goods are imported,

(i) by a manufacturer of handicrafts;

(ii) by a merchant exporter tied up with supporting manufacturer of handicrafts; or

(iii) On behalf of the manufacturer or merchant exporter by the Export Promotion Council for Handicrafts, for use in the manufacture of

handicrafts for export by the said manufacturers or as the case may be, the merchant exporter and the said manufacturers or as the case

may be, merchant exporter is registered with the Export Promotion Council for Handicraft;

(b) the value of the goods imported does not exceed 5 per cent of the FOB value of handicrafts exported during the preceding financial

year; and

(c) the importer produces a certificate from the Export Promotion Council for Handicrafts certifying the value of exports made during the

financial year mentioned in clause (b) above and also the description, value and quantity of the item(s) already imported under this

notification during the current financial year.â??

6. Admittedly respondent have produced the certificate from the Export Promotion Council for Handicrafts, as required in the said notification. The

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revenues contention is that the respondents have procured the said certificate by misrepresenting the FOB value of export as also by mis-declaring the

simple wooden furniture as handicraft furniture. On the other hand, it is the contention of the respondent that they have filed the requisite information

before Export Promotion Council of handicraft, which was duly authenticated by the Chartered Accountant and the certificates stand issued on the

basis of the said information. We find that the Revenue, apart from making a bald statement that such certificates stand issued based upon mis-

declaration made by the assessee, has not referred to or relied upon any evidence to substantiate the said allegation. The Notification requires

issuance of certificate by the highest body operating in the field of export of handicraft. To allege that the said certificates were wrongly procured is in

excess jurisdiction of the Customs, who have not been given any authority by the notification in question the correctness of the EPC certificates. The

respondents are registered as manufacturers with the said Export Promotion Council. To allege that such certificates were obtained by mis-

declaration, without any evidence, amount to casting suppressions on the said highest body dealing with export of handicraft. As such we find no

merits in the revenues contention that such certificates were obtained by mis-declaration.

7. The Revenue has also contended that the furniture exported by the appellant was simple furniture not covered by the definition of handicraft. We

find that there is no definition of handicrafts available either in the act or under notification. Shri Sandeep Mundra of the Respondent unit, in his

statement recorded on 4.10.2005, has categorical by stated that the furniture has visual appeal due to stone inlay, carving etc. and further hand

embellishment & hand distressing were work done to make the furniture Artistic which are sold in the International market because of its beauty. We

also note that the appellant had imported stone etc also for use in the exported furniture. On the other hand the revenue has gone by the examination

of the furniture by the customs officers, who cannot be held to be experts in the field. There is no expert opinion produced by the customs authorities.

On the other hand the fact that the appellant is registered with the export promotion council in handicraft, is indicative of the fact that furniture

manufacture by the appellant is handicraft, in which case the benefit of the notification No. 21/2002 would be available to them.

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8. We may, with appreciation, reproduce the relevant para from the impugned order of Commissioner (Appeals).

â??The appellant have also contended that, the department has no jurisdiction to sit in appeal over certificates grants by competent

authority/ proper officer, in compliance with conditions for grant of exemption and come to their own conclusion. I find that, the argument

of the Appellant bears strong force, so long as the Appellants hold a valid certificate before the issuing authority is not sustainable. There is

no evidence on record to prove that the validity of the said certificate has been challenged before the issuing authority, thus denial of

benefit of exemption notification on such ground is not sustainable. The tribunalâ??s judgment in the case of A.B. Control Vs. CC reported

in 1989 (44) ELT 25 (Tribunal) is also squarely applicable in this case. I also agree with the Appellants contention that the department has

no jurisdiction to doubt the validity of the certificate issued by the competent authority. The requirement of the Notification is only that the

Appellant should have a certificate from EPCH. It is not the jurisdiction of the department, to verify, whether the EPCH has issued the

certificate after physical verification of the goods or on the base of record produced before them. So long as the Appellants have valid

certificates, benefit of the Notification cannot be denied.â??

9. At this stage we make take note of the Tribunal decision in Guru Nanak Saw Mills Vs. CCE, Meerut 2009 (248) ELT 793 (Tri.-Del.) where it was

held that the wooden furniture predominantly made by hand with artistic feature has to be held as satisfying the criteria of handicraft laid down by

Apex Court in the matter of Louis Shoppe [1996 (83) ELT 13 (S.C.)]. Similarly, Tribunal, in the case of tip top Furniture Industries V/s. CCE, Calicut

2005 (186) ELT (Tri. Bang.) held that furniture with design items have visual appeal in the nature of ornamentation have to be held as handicraft. The

Tribunal also observed that certificate issued by handicraft Development Corporation of Kerala Ltd. are required to be accepted, having been issued

by an organization which is dealing with handicraft which is an expert in the field. The said decision stands upheld by Supreme Court, when the appeal

filed by the Commissioner was rejected reported as 2005 (189) ELT A 113 (SC).

10. In view of the foregoing discussions, the appels filed by the Revenue are

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rejected.

(Pronounced in the open CourtÂ)

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