

(2011) 08 KAR CK 0056
In the Karnataka High Court
Case No : CSTA No. 13 of 2007

Commissioner of Customs, Bangalore

APPELLANT

Vs

Sun Knit Wear Pvt. Ltd.

RESPONDENT

Date of Decision : 11-08-2011

Acts Referred:

Customs Act, 1962 — Section 111 (o)

Citation : (2012) 278 ELT 165

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : Susheela and Mr. N.R. Bhaskar, for the Appellant; B.G. Chidanand, URS, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—The revenue has preferred this appeal challenging the order passed by the 2006 (113) ECC 229 which has set aside the order of confiscation of goods and imposition of fine and penalty on the ground that there is violation of Section 111(o) of the Customs Act, 1962 (hereinafter referred to as the "Act") by the assessee. The assessee imported equipment against the EPCG licence under the special scheme availing the benefit of Customs notification No. 29/97-Cus., dated 1-4-1997 as amended. On the import of capital goods under the above scheme, the duty foregone by the revenue is to the tune of Rs. 12,96,480/-. The notification lists out the conditions subject to which exemption would be available. According to Condition No. (1), the importer should possess valid licence issued under the EPCG Scheme. In the present case, the assessee did not have such licence and there is no dispute on this point. According to condition No. (2), the importer should execute a bond before the Assistant Commissioner of Customs for fulfillment of expiry obligation equivalent to nine times of CIF value of capital goods for import under the licence within a period of six years from the date of issue of the said licence in the proportions mentioned in the order of the Tribunal Condition No. (5) required the importer to import

capital goods up to the threshold level of Rs. One Crore. The said condition was not complied with. As the assessee was unable to comply with the condition stipulated in the notification before claiming exemption, he was not entitled to exemption and therefore, he was called upon to pay the duty and for delayed payment of duty, interest thereon was levied. The assessee paid the duty and the interest. It is thereafter the authorities initiated proceedings of confiscation and passed the impugned order confiscating the goods and appropriating the amount by enforcing the bank guarantee. It is that order which was challenged by the assessee before the Tribunal. The Tribunal held that when once the appellant did not avail the benefit of exemption under the notification as they did not comply with the conditions stipulated therein, they go out of the notification, then, they have to pay the duty and interest which they have paid. Therefore, the question of confiscation on the ground of non-compliance of the terms of the said notification would not arise. Therefore, the order of confiscation, fine and penalty was set aside. Aggrieved by the said order, the present appeal is filed.

2. The learned counsel appearing for the revenue assailing the impugned order contends that when once the assessee did not comply with the terms of the notification, Section 111(o) of the Act was attracted and the assessee is liable to pay the duty and the order of confiscation is valid. Consequently, the order imposing penalty and fine is also in order. Therefore, the Tribunal was in error in setting aside the order.

3. Per contra, learned counsel for the assessee argued in support of the impugned order.

4. From the aforesaid material, it is clear that the Notification No. 27/97-Cus., dated 1-4-1997 as amended grants benefit to the assessee insofar as payment of customs duty is concerned. The condition precedent for availing the benefit is, it is required to import capital goods up to the threshold level of Rs. 1 Crore. If that condition is fulfilled, then, the notification is applicable and after availing the benefit of importing goods, they pay the duty. If it does not perform its export obligations, then, it can be said that he has violated the terms of the notification. Though in the instant case, relying on the said notification, the assessee imported the capital goods but not to the extent of Rs. 1 Crore, he cannot have the benefit of waiver of duty. It is under these circumstances, he paid the duty and for delayed payment, he paid interest and thus, he did not avail the benefit of that notification. Therefore, the question of assessee conducting himself contrary to the notification thus exposing himself to the order of confiscation, do not arise. It is under these circumstances the Tribunal was justified in holding that when once the assessee pay the duty and interest, goods will be out of the ambit of the said notification and they cannot be held liable for confiscation u/s 111(o) of the Act. The said finding is legal and valid and we do not see any infirmity in the said order which calls for interference. Thus, substantial questions of law framed in this appeal are answered in favour of the assessee and against the revenue. There is no merit in this appeal and accordingly it is dismissed. No

costs.