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(2015) 04 AHC CK 0164

In the Allahabad High Court

Case No : Customs Appeal Defective Nos. 18-19 of 2015

Dhampur Sugar Mills Ltd. APPELLANT

Vs

Commissioner of Customs RESPONDENT

Date of Decision : 08-04-2015

Acts Referred:
Customs Act, 1962 — Section 114(i), 125, 145

Citation : (2015) 321 ELT 565

Hon'ble Judges : Arun Tandon, J;Satish Chandra, J

Bench : Division Bench

Advocate : Nishant Mishra and S.D. Singh, for the Appellant; Amit Mahajan, Senior SC and Ramesh Chandra Shukla, Advocates for the Respondent

Judgement

1. Heard Sri Nishant Mishra, learned counsel for the appellant and Sri Ramesh Chandra Shukla, learned counsel for the respondents. The assessee before this Court namely Dhampur Sugar Mills Limited is a manufacturer and exporter of sugar. It exported 2496MT sugar through Inland Container Depot, Loni, Ghaziabad for fulfillment of export obligation under ''Advance Authorization'', without obtaining ''Export Release Orders'' from the Chief Director (Sugar), Directorate of Sugar, New Delhi. The details of shipping bills, date and quantity in respect of the total exported 2496MT sugar are detailed in the order of the Assessing Officer dated 16-7-2013. A show cause notice dated 15-4-2011 along with the corrigendum dated 21-4-2011 was issued to the assessee as also to Sri Mukul Sharma, Addl. General Manager to explain as to why the said quantity be not impounded and confiscated under Section 113D of the Customs Act, 1962 and why penal action should not be taken against them under Section 114(i) and 114AA of the Act.

2. The petitioner responded to the notice and admitted that no ''Export Release Orders'' were obtained from the Chief Director. The raw sugar pursuant to the ''Advance Authorization'' No. 0510153112, dated 14-3-2005 & No. 0530143736, dated 24-5-2007 over the shipping bills filed with Customs at ICD Loni was

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imported. The sugar exported for fulfillment of export obligation under the ''grain to grain policy'', did not require a release order.

3. It is also their case that 2496MT of sugar was exported during the period July and August, 2010 with reference to their export obligations covered by ''Advance License'' to the tune of 106429 MT. They have also submitted that the department of Revenue, Ministry of Finance had already approved the adjustment of aforesaid quantity of 2496 MT of sugar against the aforesaid release orders issued subsequently. Similar adjustment of quantity exported prior to issuance of release order has been allowed in favour of M/s. Simbholi Sugar Mill. It was therefore, their case that there was no violation of any provision by them, in the matter of satisfaction of the export obligation against ''Advance License Scheme''. Therefore, it was suggested that the export of 2496 MT of sugar be allowed by the Directorate of Sugar and the matter be treated as closed.

4. The authority found that as per licensing Note 1 of Chapter 17 of Schedule 2 to the Export Policy under Foreign Trade Policy 2004-2009, the export of Sugar is allowed, subject to certain restrictions (a) the exporter shall be required to obtain an export release order from the Chief Director (Sugar), Directorate of Sugar or any other officer authorized by the Chief Director (Sugar) for export of sugar under Open General License or (b) ''Advance Authorization'' Scheme on ''ton to ton basis'' or (c) any other scheme permitting export of sugar. The Assessing Officer found that the assessee did not hold any release order issued by the Directorate of Sugar in respect of 2496 MT sugar exported in July to August, 2010. It has further been recorded that the actual user condition in respect of the authorization issued for import of raw sugar prior to 17-2-2009, did require the adoption of ''grain to grain'' policy and it was only after 17-2-2009, it was relaxed, and the ''ton to ton basis'' policy was made applicable. The Assessing Officer found that the assessee was liable to obtain an export release order from the competent authority before export of 2496 MT sugar, which they failed to obtain. Therefore, it has been held that the assessee was liable for penal action under Section 114(i) of the Customs Act, 1962. The Assessing Authority, however, found that since the goods had already exported, therefore, they cannot be confiscated. The authority has proceeded to levy redemption under Section 145 of the Customs Act.

5. A penalty of rupees one crore was imposed upon the assessee under Section 114(i) of the Customs Act. Another penalty of rupees one crore was also imposed under Section 114AA of the Customs Act. A penalty of Rs. 10 lacs was imposed on Shri Mukul Sharma under Section 114(i) of the Customs Act, while a penalty of like amount was imposed on Shri Mukul Sharma under Section 114AA of the Customs Act, 1962.

6. Not being satisfied with the order of the Assessing Authority the assessee and Shri Mukul Sharma preferred an appeal before the Customs, Excise and Service Tax Appellate Tribunal being Customs Appeal Nos. 60023 of 2013-CU(DB) and 60024 of 2013-CU(DB). Both the appeals have been decided by the Tribunal

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under a common judgment. The Tribunal has held that the assessee has violated Section 125 of Customs Act by exporting 2496 MT of sugar without obtaining release orders and in contravention of law. It has been found by the Tribunal i.e. the last fact finding authority, that the assessee has not manufactured this 2496 MT of sugar from the raw sugar, which it had imported under the ''Advance Authorization'' issued in its favour in the year 2005.

7. The Tribunal, however, reduced the penalty on the assessee from rupees one crore to rupees ten lacs on both the counts i.e. under Section 114(i) and 114AA respectively. A total penalty of rupees two crores has been reduced to Rs. 20 lacs, so far as the assessee is concerned qua Shri Mukul Sharma the penalty has been reduced from Rs. 10 lacs to Rs. 50,000/- under Section 114(i) and likewise under Section 114AA, thus, total penalty of Rs. 20 lacs stands reduced to rupees one lac only.

8. Before proceeding further, we may record that the Commissioner Customs, NOIDA has challenged the reduction of penalty before this High Court by means of Custom Appeal (Defective) No. 93 of 2015, which has been dismissed by the Division Bench of this Court vide order dated 23-3-2015 and the quantum of penalty as reduced by the Tribunal has been maintained.

9. Shri S.D. Singh, learned Senior Counsel for appellant/assessee has made an attempt to take this Court to the ''Export Policy'' issued under Notification dated 10-9-2004 as well as to the Notification issued on 17-2-2009 and 31-8-2010 for suggesting that the policy of ''grain to grain basis'' was applicable in the matter of export of the sugar manufactured from the raw material imported under the ''Advance Authorization'' issued in the year 2005 and the policy of ''ton to ton basis'' would not apply in the matter, which became applicable only w.e.f. 17-2-2009, for a period upto 30-9-2009.

10. We may record that the Tribunal under the order impugned has recorded a specific finding that the entire raw sugar imported by the petitioner had been utilized upto the year 2006 and that the assessee affected the export of 2496 MT of sugar in the year 2010. Therefore, it was writ large on the record that the raw material which was imported by the petitioner under the ''Advance Authorization'' was not utilized for manufacture of sugar, which had been so exported in the year 2010.

11. From the records we find that under the import authorization issued to the petitioner in the year 2005, it required the physical incorporation of the imported input in export product after allowing normal wastage, reference clause 4.1.3 at page 103-A of the present writ petition.

12. This requirement of physical incorporation of the imported input in the export product was relaxed only for the export in respect of the raw sugar to be imported from 17-2-2009 till 30-9-2009 under ''Advance Authorization Scheme'' as would be clear from paragraph 4.1.5 of the Export Policy at page 103-C of the present appeal.

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13. In the instant case, the assessee has hopelessly failed to establish the physical incorporation of the imported input in 2006 in the exported sugar in the year 2010. The Assessing Authority and the Tribunal appears to be correct in recording a finding that the appellant has violated the provisions of Customs Act, in exporting sugar without there being any ''Export Release Order'' in the facts of this case.

14. We are of the considered opinion that the Tribunal has been more-than fair in reducing the penalty to nearly 1/10 of the original penalty. There is no scope of the penalty being reduced any further by this Court. The appeals are, therefore, devoid of merits. No question of law arises in these appeals and are dismissed, accordingly.

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