(2014) 09 KAR CK 0003

In the Karnataka High Court

Case No : Customs Appeal No. 13 of 2013

Gemalto Terminals India Pvt. Ltd.	APPELLANT
Vs	
Commr. of Cus., Bangalore	RESPONDENT

Date of Decision : 10-09-2014

Acts Referred:
Customs Act, 1962 — Section 149

Citation : (2015) 322 ELT 716

Hon'ble Judges : N. Kumar, J;Rathnakala, J

Bench : Division Bench

Advocate : G. Shivadass, Advocate for the Appellant; P.S. Dinesh Kumar, Advocate for the Respondent;

Judgement

N. Kumar, J.

1. The assessee has preferred this appeal against the order passed by the Customs, Excise & Service Tax Appellate Tribunal, Bangalore [2014 (314) E.L.T. 275 (Tribunal)], refusing to accede to the request of conversion. The assessee is a Private Limited Company, having its registered office at 8th Floor, Hallmark Business Plaza, Bandra Kurla Complex, Bandra (East), Mumbai-400051. The assessee is engaged in the business of export of electronic goods including EDC terminals also known as Point-of-Sale terminals. The assessee was granted an Advance Licence dated 17-4-2006 for import of goods worth CIF value of Rs. 6,84,03,378/- without payment of customs duty against discharge of export obligation of Rs. 11,05,55,250/- by exporting 17000 numbers of EDC terminals. The period of 24 months was prescribed for fulfillment of export obligation from the date of issue of licence. The assessee fulfilled the export obligations vide 15 Shipping Bills filed in the months of May 2006 to January 2007 i.e., before the expiry of 12 months from the date of licence. Every export shipment was made after the consignment was verified by the Central Excise Officer. However, due to inadvertence, the Shipping Bills were filed as free Shipping Bills instead of DEEC Scheme Shipping Bills. The assessee also identified the excess raw material that

was imported duty free and paid the duty forgone along with interest and duly intimated the Commissioner. After fulfilling the export obligation, the assessee filed an application dated 3-8-2007 to the JDGFT, Mumbai, for redemption of the Advance Licence and issuance of Export Obligation Discharge Certificate. The JDGFT authorities observed that the 15 Shipping Bills under which the necessary exports towards the export obligation in the Advance Licence were made, were filed under the free category and not under the DEEC scheme. Therefore, they advised the assessee to get the free shipping bills converted to DEEC shipping bills by the Customs Authorities. Accordingly, the assessee submitted a representation dated 3-9-2007 to respondent No. 1, setting out the above facts and requested for conversion. A show cause notice was issued to the assessee. The said request was rejected by the authorities on the ground that, the requirement of examination, scrutiny and assessment while exporting the goods under DEEC scheme have not been fulfilled and therefore, the conversion cannot be allowed. Aggrieved by the said order, the assessee preferred an appeal to the Tribunal.

2. The Tribunal has affirmed the said finding. Aggrieved by these orders, the assessee is before this Court.

3. The learned Counsel for the assessee assailing the impugned order contends, in law, before the goods were exported, the consignment should invariably be examined and sealed by the Superintendent of Central Excise himself, however, if he is on leave or out of station for any reasons, he may depute the Inspector to examine and seal the consignment. In the instant case, on such authorization, the Inspector has examined and sealed the consignment. Both the authorities have refused to act on such examination on the ground that he is not the duly authorized officer. When the law provides for the same and when the assessee has no choice or option to get the consignment examined, that cannot be held against the assessee to deny the benefit, which was otherwise available to him.

4. Per contra, learned Counsel for the Revenue submitted that, in the ARE forms, the assessee did not claim that he is availing the benefit of DEEC scheme and he has not decoded the licence number. Admittedly, he has exported the consignment under free shipping bills. The consignments should invariably be examined and sealed by the Superintendent of Central Excise himself. It is only then the assessee is entitled to the benefit of amendment and consequently the benefit under DEEC scheme and therefore, the authorities were justified in declining to accede to his request.

5. From the aforesaid facts and rival contentions, it is clear that the assessee imported raw material without payment of customs duty against discharge of export obligation. Within the period stipulated, he did export the goods vide 15 shipping bills. By inadvertence, the shipping bills were filed as free shipping bills instead of DEEC Scheme Shipping Bills. When he sought for EODC, he was called upon to obtain an amendment under Section 149 of the Customs Act, 1962. When he approached for such amendment, he was called upon to produce Export

Obligation Discharge Certificate. When he approached with the said certificate it was found that as the consignment was not examined and sealed by the Superintendent of Central Excise, the amendment was declined on the ground that it was examined only by the Inspector. Therefore, the question for consideration is, in those circumstances, was he entitled to the benefit. The Circular No. 415/48/98-CX, dated 28-8-1998 deals with the subject "Central Excise - Examination and sealing of export consignments by the Inspector when deputed by Superintendent where the exports are under DEEC/DEPB Schemes." It provides where the AR4 indicates that the export is in discharge of an export obligation under a Quantity-based Advance Licence or a Value based Advance Licence issued under the Duty Exemption Scheme, the consignment should invariably be examined and sealed by the Superintendent of Central Excise himself. If the Superintendent is on leave or out of station for any reasons, he may depute, preferably in writing, the Inspector in-charge of the factory for this purpose. Where prior written direction is not possible due to exceptional circumstances, a post-facto approval can be given. After compilation of the examination and sealing, the concerned Inspector of Central Excise will record in the XT-1 Diary, the details of such examination including AR-4/Export Invoice numbers and date, samples drawn as per due procedure (if drawal of samples are required), number/date of corresponding Advance Licence/DEEC/DEPB. Therefore, merely because the Inspector of Excise has examined and sealed the consignments exported by the assessee, it cannot be held that he is not entitled to the benefit. In fact, without an authorization by the Superintendent of Central Excise, he cannot perform the said function. Whether there is an authorization or not in writing, the assessee will not have any personal knowledge. It is a document, which would be in the custody of the authorities. Admittedly, both the authorities have not applied their mind in this direction. Before rejecting the request of the assessee on the ground that a person, who is not authorized, has examined and sealed the consignment, it was necessary for them to find out, whether on the day the goods were cleared, whether the Superintendent of Central Excise was on duty or was he on leave or out of station for any reasons and whether in his absence he had deputed the Inspector of Central Excise to perform the function of examining and sealing of the consignment. If he had deputed, then the examination done by the Inspector of Excise would be a valid inspection and the authorities then have to look into the records and then find out whether the said export was in discharge of the import obligations. If there was no such deputation and the person, who did the inspection, was not authorized, may be, the assessee would not be entitled to the said benefit. This exercise has not been done by both the authorities. Without said fact being ascertained, the impugned order passed is not legal and cannot be sustained. Hence, we pass the following order:

The appeal is allowed. The impugned orders are hereby set aside. The entire matter is remitted back to the Commissioner of Customs to undertake the aforesaid exercise and then pass appropriate orders in accordance with law. All the contentions of both the parties are left open to be agitated before the Commissioner, who would consider it in accordance with law.

