
(2016) 06 BOM CK 0157
In the Bombay High Court
Case No : Writ Petition No. 8968 of 2011

ISMT Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 17-06-2016

Acts Referred:

Citation : (2016) 338 ELT 356

Hon'ble Judges : S.V. Gangapurwala and K.K. Sonawane, JJ.

Bench : Division Bench

Advocate : Mrs. Charuta Deshmukh, Advocate, for the Petitioner; Shri S.B. Deshpande, ASG, for the Respondent

Final Decision : Allowed

Judgement

S.V. Gangapurwala, J.—The petitioner is praying for quashment of the order passed in revision application on 20th December, 2010, thereby confirming the order passed by the Commissioner (Appeals) Central Excise and Customs, Aurangabad under the policy framed by the Excise Department. In order to avail the benefits of Notification No. 42/2001, the goods shall have to be exported within six months from the date on which those were cleared for export from the factory of the production or the manufacturer or warehouse or other approved premises within such extended period a the Assistant Commissioner of Central Excise or Deputy Commissioner may in any particular case allow. According to Revenue, the petitioner has exported the goods without payment of duty under the letter of undertaking. As they failed to submit the proof of export within the stipulated period of six months, the petitioners debited the duty involved in various Cenvat Accounts. Since they failed to pay the interest involved, the Assistant Commissioner after due process of adjudication, confirmed the interest payable under [Section 11AC] of the Central Excise Act, 1944 and also imposed equal penalty on them. It was later on disclosed that said Cenvat credit is again taken by the petitioner after furnishing proof of export. It is not a matter of dispute that the petitioner has exported the goods within a period of six months

from the date of production and as such, under the policy of the Government, it is entitled for exemption. It is the contention of the Revenue that since the petitioner has failed to submit a proof of the export, the Revenue is justified in directing imposition of levy and penalty. Reliance is placed on a circular dated 20th May, 1996, where-under, an exporter is obliged to file the proof of export.

2. Mrs. Deshmukh, learned counsel for the petitioner submits that the document dated 2-12-2010 issued by the Assistant Commissioner itself clarifies the authenticity of the export. It has been established and confirmed that the duty has been deposited correctly, so also, the proof of export has been accepted. The learned counsel relies on the judgment of the Apex Court in the case of "Mangalore Chemicals and Fertilizers v. Deputy Commissioner" - AIR 1992 SC 152 : 1991 (55) E.L.T. 437 (S.C.).

3. Mr. Deshpande, learned counsel submits that the petitioners were required to submit the proof of export within a period of six months. Petitioners failed to submit the same. Unless proof of export is submitted, it would not be possible for the authority to come to the conclusion about the payment of duty and export having taken place within six months. Proof of export has to be to the satisfaction of the authority. The condition of satisfaction of the authority regarding the proof of export is mandated in the undertaking prescribed and submitted by the petitioner also. Learned counsel relies on the judgment of the Apex Court in the case of Kedarnath Jute Manufacturing Co. v. Commercial Tax Officer dated 2nd April, 1965.

4. We have considered the submissions. Petitioners failed to submit the proof of export within the stipulated period of six months. The authorities, after undertaking the process of adjudication under [Section 11AC] of the Central Excise Act, imposed penalty as the petitioners failed to pay the interest also. It is disclosed that Cenvat credit is taken by the petitioners after furnishing the proof of export. There is no dispute between the parties that the duty has been debited correctly and the authenticity of the export is established and proof of export has been accepted by the Department. No provision is pointed out which lays down the consequences of imposition of penalty and interest on non submission of proof of export.

5. The Apex Court in the case of Mangalore Chemicals referred to supra, has observed that the distinction between the provisions of the statute which are of substantive character and were built in with certain specific objectives of policy on one hand and those which are merely procedural and technical in their nature on the other hand, must be kept clearly distinguished.

6. In the light of above, the impugned judgments are quashed and set aside. Rule is made absolute in terms of prayer clause (A). In the circumstances, there shall be no orders as to costs.