(2013) 04 GUJ CK 0116

In the Gujarat High Court

Case No : Special Civil Application No. 781 of 2013

K.L.J. Organics Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 17-04-2013

Acts Referred:

Citation : (2013) 297 ELT 490 : (2014) 45 GST 139 : (2014) 24 GSTR 321

Hon'ble Judges : Sonia Gokani, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Paresh M. Dave with Paritosh Gupta, for the Appellant; R.J. Oza, for the Respondent

Judgement

Akil Abdul Hamid Kureshi, J.—Heard learned counsel for the parties for the final disposal of the petition. The petitioners have challenged an order dated 20-6-2012 [2013 (291) E.L.T. 138 (GOI)] as at Annexure-I to the petition in following factual background.

2. Petitioner No. 1 is a Company engaged in manufacturing of chemical products. Petitioner No. 2 is its office bearer. On 12-9-2007 the petitioners removed from its factory for export consignment of chemical product namely Chlorinated Paraffin Wax under Form ARE-1. As per the procedure, the petitioners were required to furnish before the appropriate authority proof of actual export. On 18-6-2008 the Range Superintendent, issued a letter calling for proof of such export. The petitioner replied to such letter under a communication dated 26-6-2008. The Superintendent was not satisfied with the explanation contained therein. He therefore, issued a show cause notice dated 5-9-2008 proposing to reject the documents submitted by the petitioners as a proof of export and further proposing to enforce the letter of undertaking submitted by the petitioners for recovery of duties of Rs. 2,59,592/- not paid on the goods in question. The petitioners opposed the show cause notice. The Assistant Commissioner however, passed his Order-in-Original dated 26-3-2009 and confirmed the duty demand of Rs. 2,59,592/- with interest and matching penalty.

3. Against such order, the petitioners preferred an appeal. The appeal was however, dismissed by an order dated 6-9-2010. In such appeal order however, the penalty was reduced to Rs. 50,000/-.

4. The petitioners filed revision application before the Government of India. Such revision application was dismissed by the impugned order dated 20-6-2012. Hence, the petition.

5. At the outset, learned counsel for the petitioners drew our attention to the averments made in para 7 of the petition, in which, it is stated inter alia that the goods were actually exported from Nhava Seva Port. There were sufficient documents in original submitted before the authorities in support of the proof of export. However, the original ARE-1 form could not be produced because such documents were seized by the Customs Authorities.

6. In addition to such averments made in the petition, learned counsel for the petitioners drew our attention to a letter dated 26-6-2008, written by the petitioners to the Superintendent, in which, it is stated as under:

In this regard, it is informed that the consignment of finished goods removed under ARE-1 No. 104, dated 12-9-2007 has already been exported within six months from the date of the removal of the said consignment. In relation to the export, we have received Bill of Lading No. HDMUNSPK1010780, dated 16-9-2007. Bank Realisation Certificate dated 5-4-2008 and Mate receipt dated 16-9-2007. However, the other documents like Original, Duplicate copies of ARE-1s & shipping bill are lying with the customs officer. But, from the other documents, referred to above, it is evident that the goods under ARE-1 No. 104, dated 12-9-2007 has been exported. We enclose the photocopies of Bill of Lading No. HDMUNSPK1010780, dated 16-9-2007, Bank Realisation Certificate dated 5-4-2008 & Mate receipt dated 16-9-2007 for your reference.

7. Counsel for the petitioners further submitted that such documents have now been released by the Customs Authorities under an Order-in-Original dated 16-1-2013. In the said order, adjudicating authority also provided as under:--

The Export Promotion copies of the Shipping Bill No. 5588062, dated 13-9-2007, shall be issued, after the forceful entry of the date of Let Export Order, only after payment of all the above dues, along with the interest, if any.

8. On the basis of such developments, counsel for the petitioners submitted that the sole objection of the respondents can now be removed by production of the document, if the petitioners are granted an opportunity.

9. Learned Counsel Shri Oza for the department has opposed the request on two grounds. He drew our attention to the revisional order, which referred to a time limit of six months for production of such documents. He contended that even if there was no such rigid time limit for the productions, petitioners have failed to produce such documents before the authority earlier. No fresh opportunity therefore should be granted.

10. Having heard counsel for the parties, we are inclined to place the entire issue back at the disposal of the adjudicating authority to enable the petitioners to produce additional documents in original and to enable the adjudicating authority to verify such documents and pass the fresh order in accordance with law.

11. Both the objections of the Revenue cannot be accepted. Firstly, we do not find any time limit provided either in Rule 19 of the Central Excise Rules, 2002 or in the Notification dated 26-6-2001 referred to by the revisional authority in the impugned order. Such Notification, which is issued in exercise of powers under Rule 19 of the Central Excise Rules, 2002 lays down the procedure and condition on which the goods can be so removed. Condition No. (ii) in para-1 of the Notification requires the manufacturer to export such goods within six months from the date of which they were cleared for export from the factory of the production or the warehouse, etc. This condition does not provide for filing of original documents within any time limit. This is not to mean that no time limit is fixed would permit a party to produce such documents at any time howsoever late. In the present case, such documents were seized by the Customs Authority. Therefore, the petitioners could not produce the same before the adjudicating authority and the higher authority, till the documents were released in June-2012 as noted above. Therefore, no fault can be attached on the petitioners. Before the Appellate as well as Revisional Authorities also the petitioners had taken a stand that such documents are in the custody of the Customs Officer and therefore, could be produced. Under the circumstances, Order-in-Original dated 26-3-2009, the appellate order dated 6-9-2010 and review order dated 20-6-2012 are set aside. The proceedings are placed back before the adjudicating authority. The petitioners would have opportunity to produce additional documents, which they may do latest by 30th May, 2013. If so done, the adjudicating authority shall pass a fresh order in accordance with law after examining such documents. The petition stands disposed of accordingly.