
(2024) 11 CESTAT CK 1293

In the Customs, Excise And Service Tax Appellate, New Delhi

Case No : Customs Appeal No.51086, 51761 of 2022

**M/s. Kumar Trading Company @APPELLANT @Hash Commissioner of
Customs (Import) @RESPONDENT**

Date of Decision : 20-11-2024

Acts Referred:

Customs Act, 1962 — Section 25(1), 28AA, 108, 110, 111, 111(o), 112, 114, 114A, 125

Delhi Value Added Tax Act, 2004 — Section 18

Customs Tariff Act, 1975 — Section 3(3), 3(5)

Citation : (2024) 11 CESTAT CK 1293

Hon'ble Judges : Binu Tamta, Member (J); Hemambika R. Priya, Member (T)

Bench : Division Bench

Advocate : Sudhir Malhotra, Mukesh Kumar Shukla

Final Decision : Dismissed

Judgement

Binu Tamta, J

1. Separate appeals have been filed by M/s.Kumar Trading Company, The Appellant challenging the Order-in-Appeal No. CC(A)/Customs/D-II/Imp/ICD/TKD/1341-1342/2021-22 and Order-in-Appeal No.CC(A)/Customs/D-II/Exp/ICD/TKD/1340/2021-2022 dated 02/11/2021/09.11.2021 denying the benefit of the exemption notification and thereby confirming the demand of duty along with interest and penalty.

2. The appellant being a trader imported Men Shoes (RITC 64021990). The appellant had filed separate Bills of Entry, BE for clearance of their goods without paying the Counter-vailing Duty, CVD by claiming exemption in terms of S.No.180 (a) of the Table in the Notification No.12/2012-CE dated 17.03.2012. They had also not paid the Special Additional Duty, SAD of customs by claiming exemption under Sl.No.2 of the Table in Notification No.21/2012-Cus dated 17.03.2012.

3. On the basis of intelligence regarding wrongly claimed exemption, the goods were examined and it was found that :-

(i) the total number of packets and shoes packed therein were tallied with the declaration made by the importer in BE, invoice and packing list.

(ii) RSP/MRP was mentioned on the stickers affixed inside the shoes by stitching which neither could be termed as embossed nor indelibly marked on the shoes itself. Thus, it appeared that they had not satisfied the mandatory condition mentioned at Sl.No.15 of the conditions of Notification No.17/2012-Cus. Which explicitly stated:

“this exemption shall apply only to such footwear on which the retail sale price is indelibly marked or embossed on the footwear itself.”

(iii) They had not declared their Value Added Tax Registration Number of that State where they intended to sell the imported goods, which is a mandatory condition for availing benefit of notification no.21/2012-Cus dated 17.03.2012.”

4. The goods were accordingly seized under Section 110 of the Customs Act, 1962, The Act which were provisionally released subject to the conditions. The statement of Shri Yashpal Arora, Proprietor was recorded under Section 108 of the Act on 02.03.2016.

5. Show cause notice dated 26.04.2016 was issued for the period 9.7.2015 to 22.2.2016 and show cause notice dated 2.2.2017 was issued for the period 7.3.2013 to 30.12.2015 (period from 9.7.2015 to 30.12.2015) is common in both the appeals, proposing confiscation of the goods under Section 111 demanding SAD, CVD and Customs Cess along with interest and penalty under Section 112 of the Act. By separate orders dated 26.03.2018 and 14.12.2018, the demand as proposed in the show cause notice was confirmed as the imported goods were held to be not eligible for the benefit of the notification. The order-in-original dated 14.12.2018 was challenged by the appellant as well as by the Department on the issue of penalty not being imposed of the equal amount to the duty demanded as prescribed under Section 114 of the Act. Against the other order-in-original dated 26.03.2018, the appellant had filed the appeal before the Commissioner (Appeals). The Commissioner (Appeals) passed separate orders dated 02.11.2021 and 09.11.2021, whereby the appeal filed by the Revenue for enhancement of the appeal was allowed and the appeal filed by the appellant was rejected upholding the order-in-original. Hence, the present appeals have been filed before this Tribunal.

6. Heard Shri Sudhir Malhotra, learned counsel for the appellant and Shri Mukesh Kumar Shukla, learned Authorised Representative for the Revenue.

7. The submission of the learned counsel for the appellant is that Men Shoes imported by the appellant were of MRP less than Rs.500/- and was, therefore, entitled to exemption of SAD and CVD in respective notifications.

8. Referring to the provisions of notification, learned counsel argued that as per Schedule-I to Delhi VAT Act, no VAT is leviable in respect of the impugned goods and, therefore, no registration was required as per Section 18 of the Delhi VAT

Act. He also submitted that though the appellant was registered with VAT Department in Delhi Government while filing the BE No.4227461 dated 11.02.2016, however, they obtained TIN No.26216, after booking of this case. Since the condition of the registration with the State Tax Authorities was fulfilled before provisional release of the goods and before the issuance of the show cause notice, there is no contravention of the provisions of the notification. On the other issue, learned counsel submitted that the MRP was indelibly marked on the footwear permanently affixing by stitching, which was apparently visible. Learned counsel also submitted that in case SAD was paid, the same is refundable on clearance of imported goods vide notification no.102/2007 dated 14.09.2007. He, therefore, relied on the principles of revenue neutrality. The CVD was demanded only in respect of the BE No.4227461 dated 11.02.2016, which is the subject matter of the show cause notice dated 26.04.2016. In this regard, learned counsel submitted that the show cause notice admits the fact that RSP/MRP was mentioned on the stickers, which was found affixed inside the shoes by stitching. Learned counsel also points out that they had earlier imported such footwear and the clearance thereof was accepted by the Department that retail sale price was indelibly marked on the footwear imported and accordingly, no CVD was demanded in both the show cause notices except the BE dated 11.02.2016. In fact in this regard, it was mentioned that the appellant had requested the Customs Department for embossing RSP on the footwear imported vide BE No.4227461 dated 11.02.2016 before allowing shoes out of charge. He disputed that the demand is arbitrary on account of procedural infirmities. Learned counsel also contested the invocation of extended period of limitation as well as confiscation and the penalty.

9. The learned Authorised Representative reiterated the findings of the Authorities below that the appellant failed to comply with the mandatory conditions of the exemption notification, which required them to declare their Value Added Tax (VAT) Registration Number and hence they were liable to pay the SAD on imports. The learned Authorised Representative then pointed out that the appellant did not meet the requirement under the notification i.e., the goods are indelibly marked or embossed with the RSP. The RSP/MRP was mentioned on the footwear imported by the appellant by a sticker stitched on one side, inside the shoe instead of indelibly marked or embossed and thereby violated Condition No.15 of Notification No. 17/2012. He also submitted that the claim of revenue neutrality is not valid as refund of SAD is subject to proper scrutiny mechanism, which cannot be by-passed. According to him, the demand for SAD, CVD and penalties, along with interest are legally tenable and no interference is called for with the impugned order.

10. Having heard both sides and perused the records of the case, we find that the main issue for consideration is whether the appellant is entitled to claim exemption from Additional duty of Customs (SAD) vide Notification No.21/2012 dated 17.03.2012 (Sl.No.2), as amended by Notification No. 32/2012 dated 08.05.2012 and counter-veiling duty (CVD) vide Notification No.12/2012, CE

dated 17.03.2012 (Sl. No.180).

11. SAD was leviable in exercise of power conferred by Section 3(5) of Customs Tariff Act, 1975 and vide Notification No. 21/2012, it was levied at 4% Adv. The relevant contents of Notification No.21/2012 reads as under:

"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notifications of the Government of India, in the Ministry of Finance (Department of Revenue), No. 20/2006-Customs, dated the 1st March, 2006, published in the Gazette of India, Extraordinary, part II, Section 3, Sub-section (i), vide number G.S.R. 92 (E), dated the 1st March, 2006, and No. 29/2010-Customs, dated the 27th February, 2010, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 92 (E), dated the 27th February, 2010, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below, falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India, from so much of the additional duty of customs leviable thereon under sub-section (5) of section 3 of the said Customs Tariff Act, as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the Table aforesaid: Provided that in respect of the goods specified in S. Nos. 2, 46, 70, 87 and 98, imported on or after the 1st day of May, 2012, the exemption contained herein shall apply if the importer, declares,-

(i) the State of destination where such goods are intended to be sold for the first time after importation on payment of value added tax; and

(ii) his value added tax registration number in that State."

12. The Notification No.32/2012 dated 08.05.2012, amended the Notification No. 21/2012, inter-alia providing as under:

In the said notification, -

"I. in the proviso, for condition numbers (i) and (ii), the following shall be substituted, namely:-

(i) the State of destination namely the State where the goods are intended to be taken immediately after importation, whether for sale or for distribution on stock transfer basis; and

(ii) his VAT (Value Added Tax) registration number or Sales Tax registration number or Central Sales Tax registration number, as the case may be, in the said State."

13. The submission of the learned Counsel for the appellant that as the impugned goods were less than Rs.500/-, they were specified in Schedule-I to

the Delhi VAT Act, 2004 and, therefore, the proviso to Section 18 of Delhi VAT Act did not require registration, will not really entitle the appellant to claim exemption by virtue of the notification issued under the provisions of the Customs Tariff Act, 1975, CTA, 1975. Before proceeding further, the provisions of Section 18 as relevant for present controversy are given below:-

"Section 18 of Delhi Added Tax Act, 2004 Mandatory and voluntary registration.

Rule: Nil Form: Nil

(1) Every dealer is required to apply for registration under this Act if-

(a) the dealer's turnover in the year preceding the commencement of this Act exceeded the taxable quantum; or

(b) the dealer's turnover in the current year exceeds the taxable quantum; or

(c) the dealer is liable to pay tax, or is registered or required to be registered under Central Sales Tax Act, 1956 (74 of 1956):

Provided that a dealer dealing exclusively in goods mentioned in the First Schedule shall not be required to register."

The provisions of Section 18 of the Delhi VAT Act requires mandatory and voluntary registration for the purposes of that Act and by virtue of the proviso excludes goods, which are mentioned in the First Schedule from the mandatory requirement of registration, however, the claim for exemption by the appellant does not arise under the Delhi VAT Act. The appellant is seeking exemption under the notification issued in terms of Section 3(5) of CTA and, therefore, it is necessary to comply with the conditions enumerated in the said notification. The appellant cannot pick and choose what is beneficial to him but at the same time discard the conditions enumerated in the notification, which entitles them to the exemption. If the appellant chooses to seek the exemption under the notification, they are bound to comply with the conditions specified therein. The condition to declare the value added registration number in that State has been couched in a manner, which makes its compliance mandatory, i.e., the exemption contained herein shall apply if the importer, declares his value added tax registration number in that State. Moreover, sub-clause (ii) has to be read with sub-clause (i) of the Notification so as to ascertain the intent behind the condition to declare the VAT registration. The whole purpose behind the two sub-clauses is to link the goods which are imported and are intended to be sold in the state of destination. Thus the condition of declaring the VAT registration number is not merely a procedural requirement, which can be ignored rather, it makes the entitlement to exemption subject to the condition that the VAT registration number is declared. The submission of the learned Counsel that the appellant had got the TIN number on 26.02.2016 under Delhi VAT Act, has no merit as on the date of filing the bill of entry dated 11.02.2016, the appellant was not registered with the Delhi VAT Department. The fact that they subsequently obtained the registration will not entitle them to avail the exemption of SAD under the notification which

makes it a pre-requisite condition for the applicability of the exemption.

14. We may now consider the other allegation of non-compliance with the condition specified in the Notification No.12/2012-CE dated 17.03.2012, so as to avail the benefit of exemption from payment of CVD, which was leviable under Section 3(3) of CTA, the relevant provisions of Section 3(3) and the notification are quoted below:

"Section 3(3) of Customs Tariff Act, 1975 Levy of additional duty equal to excise duty, sales tax, local taxes and other charges

(1).....

(2).....

(3) if the Central Government is satisfied that it is necessary in the public interest to levy on any imported article [whether on such article duty is leviable under sub-section (1) or not] such additional duty as would counter-balance the excise duty leviable on any raw materials, components and ingredients of the same nature as, or similar to those, used in the production or manufacture of such article, it may, by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty representing such portion of the excise duty leviable on such raw materials, components and ingredients as, in either case, may be determined by rules made by the Central Government in this behalf.

(4) to (12)....."

Notification No.12/2012 dated 17.03.2012 S.No.180(a) reads as under:-

Sl.No.

Chapter or heading or sub-heading or tariff item of the First Schedule

Description of excisable goods

Rate

Condition No.

1.

2.

3.

4.

5.

180

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- a) Footwear of retail sale price not exceeding 500 per pair.
- b) Footwear of retail sales price exceeding Rs.500/- but not exceeding Rs.1000/- per pair.

Explanation:- "retail sale price" means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like, as the case may be, and the price is the sole consideration for sale.

Nil

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Condition No.15

This exemption shall apply only to such footwear on which the retail sale price is indelibly marked or embossed on the footwear itself.

15. There is no dispute that the footwear imported by the appellant was having MRP less than Rs.500 per pair and hence they were exempted from payment of excise duty subject to the condition that the retail sale price is indelibly marked or embossed on the footwear itself. The requirement under Condition No.15 is not merely that it should be marked or embossed in any manner but that it should be indelibly marked or embossed. The intent behind incorporating the term 'indelibly' with the expression marked or embossed is obvious that there is no possibility to remove the MRP/RSP. This is clear from the dictionary meaning of the term 'indelibly', which means, it cannot be removed and cannot be washed away or erased, something which is imperishable. In simple words, the legislature has consciously used the term 'indelibly' to mark the MRP/RSP so as to avoid any tampering with the MRP/RSP declared. The appellant has deliberately circumvented the compliance of the said condition by merely putting the MRP/RSP on a piece of cloth stitched on one side. This kind of labelling can be easily removed, which implies that the appellant has not complied with the condition in its true spirit as enumerated in the notification. In this regard, we are supported by the purposive test laid down by the Apex Court in *Mangalore Chemicals & Fertilizers Ltd. Vs. Deputy Commissioner*, 1991 (55) ELT 437 with reference to the non-compliance of the conditions, "Its stringency & mandatory nature must be justified by the purpose intended to be served." We are, therefore of the view that the appellant having failed to comply with the conditions of the notification, which are mandatory in nature are not entitled to avail the exemption provided therein.

16. If we accept the plea of the appellant that there is a substantial compliance of the conditions as they had affixed the MRP/RSP on the shoes by means of a stitched cloth, it would amount to deleting the word 'indelibly', which has been specifically used in the notification. We are afraid that such a course is not

available. Reliance is placed on the decision of Sri Jeyaram Educational Trust Vs. A.G. Syed Mohideen, 2010 2 SCC 513, where the Apex Court held as under:-

"It is now well settled that a provision of a statute should have to be read as it is, in a natural manner, plain and straight, without adding, substituting or omitting any words. While doing so, the words used in the provision should be assigned and ascribed their natural, ordinary or popular meaning. Only when such plain and straight reading, or ascribing the natural and normal meaning to the words on such reading, leads to ambiguity, vagueness, uncertainty, or absurdity which were not obviously intended by the Legislature or the Lawmaker, a court should open its interpretation tool kit containing the settled rules of construction and interpretation, to arrive at the true meaning of the provision. While using the tools of interpretation, the court should remember that it is not the author of the Statute who is empowered to amend, substitute or delete, so as to change the structure and contents. A court as an interpreter cannot alter or amend the law. It can only interpret the provision to make it meaningful and workable so as to achieve the legislative object, when there is vagueness, ambiguity or absurdity. The purpose of interpretation is not to make a provision what the Judge thinks it should be, but to make it what the legislature intended it to be."

17. The submission of the learned Counsel that benefit cannot be denied on procedural infirmities when there is substantial compliance of the provisions is devoid of any merit as we have already concluded that the conditions of the notification violated by the appellant are mandatory. Therefore, reliance placed by the learned Counsel on the decision in Transformers and Electricals Kerala Ltd vs. CC, 1975(78) ELT 682 (T) and Webel Telematik Ltd vs. CC, 1995(80) ELT 617 (T) are not applicable. In Mangalore Chemical & Fertilizers Ltd. (supra), the Apex Court held that a distinction between provisions of the statute which are of substantial character and were built in with certain specific objectives of policy on the one hand and those which are merely procedural and technical in their nature must be clearly distinguished.

18. The plea of revenue neutrality taken by the appellant is also not sustainable as the refund against SAD under notification No. 102/2007-Cus dated 14.09.2007 is not automatic but subject to proper scrutiny and procedure. The decisions cited by the appellant in the case of India Foil Ltd v CCE, 2002(145)ELT 238(Tri-Kol) and PTC India Ltd v CCE, 2003 (159) ELT 1046 (Tri. Del) are distinguishable in view of the fact that the present case is involved under the exemption Notification, which stands on a completely different footing from the Modvat Credit Scheme under which the issue of revenue neutrality has been considered in the above two cases.

19. Applying the principles of interpretation of the exemption notification as laid down in various judgements, the contents thereof have to be construed strictly. The Constitution Bench of the Apex Court in Commissioner of Central Excise, New Delhi Vs. Hari Chand Shri Gopal, 2010(260) ELT 3 (SC) was pleased to observe as under:-

"22. The law is well-settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption.

24. The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably be expected of it, but failed or faulted in some minor or inconsequential aspects which cannot be described as the "essence" or the "substance" of the requirements. Like the concept of "reasonableness", the acceptance or otherwise of a plea of "substantial compliance" depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the pre-requisites which are essential to achieve the object and purpose of the rule or the regulation. Such a defence cannot be pleaded if a clear statutory pre-requisite which effectuates the object and the purpose of the statute has not been met. Certainly, it means that the Court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means "actual compliance in respect to the substance essential to every reasonable objective of the statute" and the Court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed. Fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important. Substantial compliance with an enactment is insisted, where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the non-compliance of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted. The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the

“substance” or “essence” of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the “essence” of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance with those factors which are considered as essential.”

20. The decision in Hari Chand Shri Gopal (supra) was subsequently relied on by another Constitution Bench of the Apex Court in Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company, 2018 (361) ELT 577 (SC).

21. Applying the aforesaid principles of substantial compliance, it cannot be concluded that the appellant has complied with the conditions of the Notifications as discussed above.

22. The appellant being a trading concern is regularly importing goods in question, however, without satisfying the pre-condition under the notification, they wrongly claimed the exemption. The attempt on the part of the appellant to justify that registration under the Delhi VAT Act was unnecessary though the notification mandates the declaration of VAT registration number was wilful misstatement of facts. The failure to declare the TIN number at the time of import violates the conditions of the exemption notification. The appellant also misled the Department that the goods imported are properly marked with the MRP/RSP. Having failed to comply with the mandatory conditions of the notification, the appellant was not eligible to the exemption claimed and was, therefore, liable to pay SAD and CVD along with interest as per Section 28AA of the Act. In the circumstances, the goods were held to be liable for confiscation under Section 111(o) of the Act and since the goods were not available, the Adjudicating Authority rightly imposed the fine of Rs.25,00,000/- under Section 125 of the Act. Consequently, we do not find any fault with the invocation of the extended period of limitation and imposition of penalty under Section 112 and also 114A of the Act, which mandates penalty equal to the duty in case of collusion, wilful misstatement or suppression of facts.

23. In view of our discussion above, we do not find any infirmity in the impugned order and the same is, accordingly upheld. The appeals, therefore stand dismissed.

[Order pronounced on 20th November, 2024]