(2021) 03 CESTAT CK 0020

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 51233 Of 2019

M/s. Moksh Exim @Hash Commissioner Of Customs (Export)

Date of Decision : 17-03-2021

Acts Referred:
Customs Act, 1962 — Section 113(i), 114(iii), 114AA

Citation : (2021) 03 CESTAT CK 0020

Hon'ble Judges : Anil Choudhary, J

Bench : Single Bench

Advocate : Harsimran Kaur Arora, P. Juneja

Final Decision : Allowed

Judgement

1. The appellant is a manufacturer exporter. For the purpose of export they import raw material mainly steel under advance licence, and under the conditions of Advance Licence are required to maintain proper record of the usage of raw material and also obligated to export and achieve the prescribed export turnover and Net Foreign Exchange earnings (NEF).

2. The brief facts are that the appellant - M/s Moksh Exim, a manufacturer, filed the free Shipping Bill No. 6959727 dated 17.08.2018 through their Customs Broker, Triways Transportation Pvt. Ltd., for export of "Assorted Utensils - Table Kitchen articles made from non-magnetic stainless steel grade - 201, of relevant thickness" (RITCD- 732393902), as per details given under two Advance Licence Nos. 051040720 dated 6.1.2017 and 0510406510 dated 17.05.2018, involving FOB Rs.34,86,522/- (USD-50,238.07) and country of destination being Gambia. (Inv. No. Ex 008 dated 17.08.2018).

Sr. No.

Description of Goods

Qty (Kg)

Rate/Kg In USD

Total USD

1.

Assorted utensils - Table, kitchen & other household articles made from non-magnetic stainless steel Grade-201.

10994.64

2.30

25287.67

2.

Assorted Utensils -Table, kitchen & other household articles made from non-magnetic stainless steel Grade-201.

10848

2.30

24950.40

Total

21842.64

50238.07

3. The said shipping bill was registered in EDI system on 21.08.2018. Accordingly, the packages were opened and examined in the presence of G- Card holder, Shri Sandeep Singh. On examination, it was observed that the export goods viz. "Assorted Utensils which are claimed to be made from non-magnetic stainless steel grade - 201", did not appear to be non-magnetic in nature. In as much as on bringing them in contact with magnet, the export goods seemed to have magnetic properties, making it difficult to infer with certainty whether they are made of magnetic or non-magnetic stainless steel.

4. The exporter was effecting the said export under two Advance Licence (Nos.051040720 dated 6.12.2017 and 0510406510 dated 17.05.2018) and as per the condition of Advance Licence, the raw materials i.e., "non-magnetic stainless steel coil grade - 201, used in the manufacture of final products/export goods, was imported with a condition that type, specification & grade of steel should conform both in import & export.

5. Representative sample of the export goods was drawn and sent to Revenue laboratory i.e. CRCL Pusa, New Delhi for ascertaining whether the goods are magnetic or non-magnetic and whether the said goods i.e. stainless steel utensils are in the category of Grade -201 or not. Accordingly, 100% examination of the export consignment was conducted in the presence of Shri Nitin Jain (Proprietor of M/s. Moksh Exim), Shri Sandeep Singh (G - Card Holder) and two independent

witnesses under Punchnama dated 30.08.2018. On 100% examination, the goods were found as per details given in invoice & packing list. No. of packages and total net weight of the goods examined was found to be consisting of 570 packages collectively weighing 21845 kgs. approximately (net weight) which was almost the same as mentioned in the invoice & packing list.

6. After examination, the test report was sent to the Customs Department. In the report, it was observed as follows: 1) Bowl and; (2) Cover. Composed in stainless steel (non-magnetic) each, is other than 201 Grade stainless steel (sealed remnant returned).

7. It appeared to Revenue that the goods under export are not as per the conditions of the Advance license. Further, as per SION norms, the proportionate permissible quantity of inputs (S.S. Coil) come to 28,395.43 kg. after giving allowance of wastage at 23.08%. The goods imported against the Advance License was imported from China involved import duty liability amounting to Rs.16,54,815/-. Thus, it appeared the appellant have mis-declared the goods under export to avail undue benefits of the Advance Authorisation, rendering the export goods liable for confiscation under Section 113(i) of the Customs Act. As appellant have waived the show cause notice and personal hearing, accordingly order in original was passed which is on record. Relying on the test report of CRCL reference was made to Foreign Trade Policy wherein Advance

Authorisation is - duty exemption scheme under para 4.01 of the policy and it issue to allows duty free import of inputs, which is physically incorporated in export product (making normal allowance for wastage). It was further held that the appellant have contravened the provisions of Section 113(i) of the Act and goods are liable for confiscation, the export goods having FOB value of Rs. 34,86,522/- with option to redeem on payment of fine of Rs. 8 lakhs. Further, penalty was imposed amounting to Rs. 4 lakhs each under Section 114(iii) and 114AA of the Act.

9. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals). The Commissioner (Appeals) recorded the finding that the raw material used is non magnetic steel which was imported by using Advance license with the condition that type specification and grade should confirm both in export and import. As per the test report the grade of the steel utensils was other than '201 grade', thus the condition of advance licence was not satisfied. Thus, evidently the appellant have mis-declared the goods in terms of grade and accordingly order of confiscation was upheld. Further, observed that in the peculiar facts that export goods meet one condition of being non magnetic in nature and FOB value of the goods to be exported. The redemption fine of Rs. 8 lakhs is on the higher side and disproportionate. Further, observed that there is no charge of diversion of imported raw material or manufacture of goods under export by using locally procured stainless steel. Further, no misdeclaration of weight, quantity or value was found and accordingly redemption fine was reduced to Rs. 4 lakhs. Further, penalty under both the sections was reduced to

Rs. 2 lakhs each.

10. Being aggrieved, the appellant preferred appeal before this Tribunal.

11. Learned Counsel appearing for the appellant points out that the appellant had taken back the goods to town and thereafter have re-exported the goods under Shipping Bill No. 8193209 dated 11.10.2018 and Shipping Bill No. 8471968 dated 25.10.2018. It is further pointed out that the Foreign Trade Development Officer under the Ministry of Commerce and Industry, New Delhi have issued 'Redemption letter' dated 16.04.2019 in respect of Advance authorisation No. 05104047620 dated 06.12.2017 and Redemption letter dated 17.09.2019 in respect of Advance authorisation No. 0510406510 dated 17.05.2018, certifying that the appellant have realised the FOB value of license and CIF value of licence and have also met export obligation in full value, as well as in quantity term in proportion to import made. Consequently, the Advance licence is redeemed in terms of para 4.2.6 of Handbook of Procedure 2004-09 and further granted that the 'Export Obligation Discharge Certificate'.

12. It is further urged that the whole exercise done by the Customs Department in the present case was in suspicion under the admitted fact that when the appellant re-exported the goods in October, 2018, the Customs Department neither made physical examination nor referred the goods for testing. Moreover, in view of the discharge of Advance Licence, the allegation by Customs Department for misuse of the imported raw material, no longer stands. Accordingly, learned Counsel prays for allowing the appeal with consequential benefits.

13. Learned Authorised Representative for the respondent/Department relies on the impugned order.

14. Having considered the rival contentions, I find that the impugned order relates to the mis-use of Advance license procedure. I further find that in view of the redemption certificate(s) issued by the Ministry of Commerce in respect of the two Advance Licences in question, certifying that the appellant have discharged their obligation, I hold that the issue no longer survives. Accordingly, impugned order is set aside and appeal is allowed. The appellant is entitled to consequential benefits, in accordance with law.

[Pronounced on 17.03.2021].