

(2022) 09 SC CK 0106

In the Supreme Court Of India

Case No : Civil Appeal No. 2576 Of 2010, 5608 Of 2011

M/S. Munjal Showa Ltd

APPELLANT

Vs

Commissioner Of Customs And Central Excise (Delhi-IV)

RESPONDENT

Date of Decision : 23-09-2022

Acts Referred:

Customs Act, 1962 — Section 25, 130

Citation : (2022) 9 JT 425 : (2022) 14 Scale 202

Hon'ble Judges : M.R. Shah, J; Krishna Murari, J

Bench : Division Bench

Advocate : Somesh Arora, Chintu Kumar, Abhishek Jain, Rahul Krishna, Rajesh Kumar, Satyajit A. Desai, Satya Kam Sharma, Siddharth Gautam, Abhinav Mutyalwar, Gajanan N. Tirthkar, Deb Deepa Mazumdar, Anagha S. Desai, Vikramjit Banerji, M.K. Maroria, P. V Yogeswaran, Siddhartha Sinha, Nikhil Majithia, Tathagat Sharma, Ramam Yadav, B. Krishna Prasad

Final Decision : Dismissed

Judgement

M.R. Shah, J

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 01.09.2008 passed by the High Court of Punjab and Haryana at Chandigarh in C.U.S.A.P. No. 27 of 2008 by which the High Court has dismissed the said appeal preferred by the appellant – assessee – M/s. Munjal Showa Ltd. filed under Section 130 of the Customs Act and has confirmed the order passed by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as the "Tribunal") confirming the demand of Customs Duty with interest, the original assessee - M/s. Munjal Showa Ltd. has preferred the present Civil Appeal No. 2576 of 2010.

1.1 Feeling aggrieved and dissatisfied with the impugned judgment and order dated 02.02.2011 passed by the High Court of Punjab and Haryana at Chandigarh in CUSAP No. 1 of 2011 by which the Division Bench of the High Court has dismissed the said appeal and has confirmed the judgment and order

passed by the Tribunal in Custom Appeal No. 576 of 2006 by which the Tribunal has confirmed the demand of Customs Duty with interest, the original assessee – M/s. Friends Trading Co. has filed the present Civil Appeal No. 5608 of 2011.

Civil Appeal No. 2576 of 2010

2. That the appellant herein – M/s. Munjal Showa Ltd. imported consignments through ICD, Ballabgarh using Transfer Release Advices (hereinafter referred to as “TRAs”) issued by the Bombay Custom House. On verification, it was found that the DEPB Licensees on the basis of which TRAs were issued, were not genuine. The goods were cleared in May/June, 2003 and by letter dated 05.08.2003, the Assistant Commissioner, ICD, Faridabad informed the appellant that TRAs issued against the DEPB Scripps were forged and that the DEPB were also forged and, therefore, the appellant was required to deposit the duty with interest in lieu of DEPB benefit availed by it.

2.1 The appellant by letter dated 07.08.2003 informed the Department that it was surprised to learn about the forgery and was taking steps to lodge F.I.R. against the transferor and sought time to make payment. The appellant deposited the amount of duty on 12.08.2003 under protest. After completion of investigation, show cause notice dated 03.10.2006 was issued to the appellant alleging evasion of duty by seeking exemption against debits in releasing the advices, which were forged and which were not genuinely issued by the competent authority. The appellant challenged the show-cause notice on the ground of limitation as well as on the ground that though the DEPB Scripps were forged but there was no intention to evade Customs Duty.

2.2 The Commissioner of Customs passed order dated 17.10.2007 holding that DEPB Scripps were forged and thus void ab initio and, therefore, the exemption availed of was inadmissible; goods were liable to confiscation and appellant was liable to interest and penalty. The Commissioner observed and held that the importer (the appellant), who claimed benefit on the basis of forged DEPB Scripps stood at par with his predecessor and, therefore, cannot get the benefit of forged documents. The order passed by the Commissioner of Customs was the subject matter of appeal before the Tribunal. The Tribunal rejected the plea of the appellant on the issue of liability of duty but remanded the matter to the original authority on the issue of penalty. It is reported that the issue with respect to penalty, on remand, is yet pending. However, the Tribunal confirmed the duty liability.

2.3 Feeling aggrieved and dissatisfied with the order passed by the Tribunal, the appellant preferred appeal before the High Court under Section 130 of the Customs Act. Before the High Court, it was mainly contended on behalf of the appellant that the show-cause notice issued was beyond the period of limitation and in the facts and circumstances of the case and when the ingredients of “fraud” and “with intent to evade payment of duty” are absent, the extended period of limitation could not have been invoked by the Department.

2.4 By the impugned judgment and order, the High Court has dismissed the said appeal confirming the order passed by the Tribunal confirming the demand of duty on the ground that "fraud" vitiates everything and therefore, the Department was justified in invoking the extended period of limitation. The impugned judgment and order passed by the High Court is the subject matter of the present Civil Appeal No. 2576 of 2010.

Civil Appeal No. 5608 of 2011

3. That the appellant imported goods and filed Bill of Entry dated 24. 11.2000. It availed exemption from payment of Customs Duty under Notification dated 07.04.1997 under Section 25 of the Customs Act, 1962 against DEPB Scrip dated 14.11.2000. Finding that the said DEPB Scrip was procured fraudulently by the predecessor, the Scrip obtained by the appellant was held to be void ab initio. Accordingly, demand of duty was raised against the appellant vide Order-in-Original dated 4.10.2005. The said order was affirmed in appeal and was further affirmed by the Tribunal. The further appeal preferred before the High Court has been dismissed by the impugned judgment and order.

3.1 At the outset, it is required to be noted that while dismissing the appeal, the High Court has relied upon its earlier decision in CUSAP No. 27 of 2008 in the case of M/s. Munjal Showa Limited Vs. Commissioner of Customs and Central excise (Delhi (IV) Faridabad).

4. We have heard the learned counsel appearing on behalf of the appellant(s) and Shri Vikramjit Banerji, learned ASG appearing on behalf of the respondent.

5. It was/is the case on behalf of the assessee that in the facts and circumstances of the case, the Department was not justified in invoking the extended period of limitation.

5.1 Relying upon the decision of this Court in the case of Commissioner of Customs (Preventive) Vs. Aafloat Textiles India Private Limited and Ors., (2009) 11 SCC 18, it is submitted that as observed and held by this Court even in the case of a fraud, an inquiry was required to be made whether the appellant(s) – buyer(s) had knowledge that DEPB Scripps were forged or fake.

6. While opposing the present appeal, Shri Vikramjit Banerji, learned ASG has submitted that in the present case, admittedly the DEPB licences/Scripps purchased by the appellant(s) of which the exemption benefit was availed, are found to be forged and fake. It is submitted that, therefore, the appellant(s) being beneficiaries of such forged and fake DEPB licenses/Scripps were liable to pay the Customs Duty of which the exemption benefit was availed against such DEPB licenses/Scripps. It is submitted that as rightly observed by the High Court as well as by the Tribunal that fraud vitiates everything and therefore, such forged/fake DEPB licenses/Scripps are void ab initio. It is submitted that therefore, no error has been committed in confirming the Customs Duty.

7. We have heard the learned counsel appearing on behalf of the respective

parties at length.

8. From the judgment and order passed by the Tribunal and even from the findings recorded by the Department, it has been found that the DEPB licenses/Scripps, on which the exemption benefit was availed of by the appellant(s) (as buyers of the forged/ fake DEPB licenses/Scripps) were found to be forged one and it was found that the DEPB licenses/Scripps were not issued at all. A fraud was played and the exemption benefit was availed on such forged/fake DEPB licenses/Scripps.

9. In that view of the matter and on the principle that fraud vitiates everything and such forged/fake DEPB licenses/Scripps are void ab initio, it cannot be said that the Department acted illegally in invoking the extended period of limitation. In the facts and circumstances, the Department was absolutely justified in invoking the extended period of limitation.

10. It is also required to be noted that the moment, the appellant(s) was/were informed about the fake DEPB licenses, immediately they paid the Customs Duty, may be under protest. The Customs Duty was paid under protest to avoid any further coercive action. Be that as it may, the fact remains that the DEPB licenses/Scripps on which the exemption was availed by the appellant(s) was/were found to be forged one and, therefore, there shall be a duty liability and the same has been rightly confirmed by the Department, which has been rightly confirmed by the Tribunal as well as the High Court.

11. Now, so far as the submission on behalf of the buyer(s) – appellant(s) relying upon the decision of this Court in the case of Aafloat Textiles India Private Limited and Ors. (supra) is concerned, whether the buyer(s) had a knowledge about the fraud or the forged / fake DEPB licenses/Scripps and whether the appellant(s) – buyer(s) was/were to take requisite precautions to find out about the genuineness of the DEPB licenses/Scripps which they purchased, would have a bearing on the imposition of the penalty, and has nothing to do with the duty liability. It is to be noted that in the present case so far as the penalty proceedings are concerned, the matter is remanded by the Tribunal to the adjudicating authority, which is reported to be pending.

12. In view of the above and for the reasons stated above, both the appeals fail and are accordingly dismissed. As the penalty proceedings are reported to be pending pursuant to the remand order passed by the Tribunal, we direct the adjudicating authority to complete the penalty proceedings on remand, at the earliest preferably within a period of six months from today.

With this, both the appeals are dismissed. No costs.