
(2015) 09 CESTAT CK 0018

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 55605 Of 2014

M/s Shri Kami International

APPELLANT

Vs

CCE And ST, Jaipur

RESPONDENT

Date of Decision : 16-09-2015

Acts Referred:

Citation : (2015) 09 CESTAT CK 0018

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : Kamaljeet Singh, Amresh Jain

Final Decision : Dismissed

Judgement

1. Appeal has been filed against order-in-appeal dated 25.07.2014 which upheld the order-in-original dated 02.05.2014 in terms of which it was held

that areca nuts (betel nuts) are not importable under Duty Free Import Authorisations (DFIAs) submitted by the appellant and accordingly with regard

to the clearance of impugned goods i.e. betel nut splits sought under the DFIA's the following order was passed by the primary adjudicating authority.

1. I deny the clearance of the subject goods i.e. Betel Nut Splits (not fit for human consumption) under the submitted OF/As as exemption

sought there under is not admissible on the subject goods.

2. I order to release the goods i.e. the Betel Nuts Splits (not fit for human consumption) on payment of duties of Rs.2,45,85,383/- as detailed

above. The importer is directed to deposit the said amount immediately through e-payment before clearance of the subject goods".

2. The facts of the case, in brief, are as under:

The appellant imported betel Nut Splits and filed Bill of Entry dated 31.03.2014

seeking clearance thereof under seven DFIA's purchased by it from the open market duly endorsed as transferable. The issue involved in this case is whether the said goods were eligible for clearance under DFIA's in terms of Notification No. 98/2009-Cus. dated 11.09.2009. The said DFIA's were issued against export of finished leather. Finished leather was covered under entries G-7 and G-46 of the Standard Input Output Norms (SION) and therefore the import of betel nuts should be permitted under the DFIA's in the category of tanning agent, claimed the appellant but the primary adjudicating authority held otherwise as per the above quoted order-in-original which was upheld by the impugned order-in-appeal.

3. During the hearing, Ld. advocate referred to the Public Notice No.112 (RE-2010)/2009-14 dated 15.05.2012, Notification No.31(RE- 2013)/2009-14

dated 01.08.2013, Public Notice No.32(RE-2013)/2009-14 dated 23.10.2013 and Public Notice No.35(RE-2013)/2009-2014 dated 30.10.2013 to

contend that SIONs at Entry G-7 and G-46 were amended vide Notification dated 01.08.2013 and vide Public Notice No.35(RE- 2013) /2009-14 dated

30.10.2013, it was clarified that if the DFIA had been endorsed transferable by the concerned RA before 01.08.2013 the provisions of Notification

No.31 (RE-2013)/2009-14 dated 01.08.2013 will not be applicable to such DFIA. The appellant contended that DFIA's submitted by it were endorsed

transferable by the concerned RA before 01.08.2013 and therefore provisions of the Notification dated 01.08.2013 will not be applicable in this case

and betel nut being a tanning agent for leather its import should have been allowed under DFIA's by the lower authorities. It cited the judgment of

Global Exim vs. CC, Ahmedabad - 2014 (310) ELT 322 (Tri. Ahmd.) which held that restrictions imposed vide DGFT Public Notice No.35 (RE-

2013)/2009-2014, dated 30.10.2013 would be applicable prospectively and allowed clearance of imported areca nuts under transferable DFIA's stating

that only broad nexus with the exported goods needed to be established. It also referred to the judgment of Gujarat High Court Ahmedabad Bench

dated 02.05.2013 in Special Civil Appeal No. 204/2011 in terms of which the import of Areca nuts was permitted under similar DFIA holding that the

clarification cannot apply retrospectively. It also cited the judgment of the Supreme Court in the case of Good Year India Limited vs. Collector of

Customs - 1997 (95) ELT 450 (SC) to state that the words 'such as' only mean

that what follows them is only illustrative and not exhaustive.

4. We have considered the contentions of the appellant. The appellant has contended that the provisions of Notification No.31 (RE-2013)/2009-14

dated 01.08.2013 cannot be applied retrospectively. Para 2 of the said notification is reproduced as under:

2. After para 4.2.24 of FTP a new para 4.1.15 is inserted.

4.1.15 Wherever SION permits use of either (a) a generic input or (b) alternative inputs, unless the name of the specific input(s) [which has

(have) been used in manufacturing the export product] gets indicated / endorsed in the relevant shipping bill and these inputs, so endorsed,

match the description in the relevant bill of entry, the concerned Authorisation will not be redeemed. In other words, the name I description

of the input used (or to be used) in the Authorisation must match exactly the name I description endorsed in the shipping bill. At the time of

discharge of export obligation (EOOC) or at the time of redemption, RA shall allow only those inputs which have been specifically indicated

in the shipping bill".

3. Para 4.2.3 of FTP is being amended by adding the phrase "4.1.14 and 4.1.15" in place of "and 4.1.14". The amended para would be as

under:

Provisions of paragraphs 4.1.11, 4.1.12, 4.1.13, 4.1.14 and 4.1.15 of FTP shall be applicable for OFIA holder".

4. Effect of this Notification: Inputs actually used in manufacture of the export product should only be imported under the authorisation.

Similarly inputs actually imported must be used in the export product. This has to be established in respect of every Advance Authorisation/

DFIA".

As there is nothing in this notification which even suggests its retrospective applicability, we agree with the appellant that it only has prospective

application. Similarly Public Notice No.32(RE:2013)/2009- 2014 dated 23.10.2013 made certain amendment I modifications in the Handbook of

Procedures Vol. II (SION Book) in terms of which entries G-7 and G-46 were revised. However, as these changes are also prospective in nature,

they do not impact the issue at hand. Indeed, vide the Public Notice No.35(RE-2013)/2009-2014 dated 30.10.2013 it has been clarified that if the

DFIA has been endorsed as transferable by the concerned RA before 01.08.2013 the provision of Notification No.31 (RE- 2013) 2009-2014 dated

01.08.2013 will not be applicable to such DFIA. The net essence of the aforesaid Public Notices/ Notifications is that as far as the impugned goods

are concerned the only Public Notice which is applicable is Public Notice No.112(RE 2010)/2009-2014 dated 15.05.2012 as all the DFIA's produced

by the appellant were endorsed prior to 01.08.2013. The said Public Notice is therefore reproduced below in full:

In exercise of the powers conferred under Paragraph 2.4 of the Foreign Trade Policy, 2009-2014 and Paragraph 1.1 of Handbook of

Procedures (Vol.1), the Director General of Foreign Trade hereby notifies the following amendment in the Handbook of Procedures, Vol.

2, 2009-2014:

2. The following General Note (No.9) is added to the General Notes for Leather and Leather Produces (Product: G) of the Standard Input

Output Norms (SION) book after General Note No.8.

9. Areca nut (i.e. Betel nut) shall be permitted for imports

(a) Only if Areca nut (i.e. Betel nut) is specifically mentioned in the SIONs;

(b) By actual users either when this input item is specifically mentioned in the SION of the respective export product or when Areca nut (i.e.

Betel nut) technically falls under the 'generic description' given in a specific SION (like under G7, G46) though not mentioned specifically.

3. For greater clarity, this General Note (No.9 of Leather and Leather Products (Product: G) given in para 2 above will also be included as

General Note No.12 to the General Notes for all Product Groups, below the existing General Note No.11.

4. Effect of this Public Notice:

Henceforth, import of Areca nut (i.e. Betel nut) as an input would be permitted only when it is by an actual user; or by anybody (including

the actual user) if it is specifically mentioned in the SION of the export product.

Sd/- (Anup K. Pujari)

Director of Foreign Trade, E-mail: dqft@nic.in

(F. No.01/94/162/085/AM-12/DES-V

5. It is an admitted fact that the appellant is not the actual user of the imported

goods. It is also a fact that areca nuts/betel nuts were not specifically mentioned in the SION for Entries Nos. G-7 and G-46 pertaining to leather goods against the export of which the said DFIA's were issued. Thus, in terms of Public Notice dated 15.05.2012 the DFIA's produced by the appellant cannot be allowed to be used for the import of Areca nut / Betel nut.

There is no ambiguity with regard to the interpretation of the aforesaid Public Notice. Indeed, so as to ensure that this clearly worded Public Notice is not attempted to be mis-interpreted, the said Public Notice itself contained para 4 to state that the effect of this Public notice was that w.e.f. 15.05.2012 import of Areca nut (i.e. Betel nut) as an input would be permitted only when it is by an actual user or by anybody (including the actual user) if it is specifically mentioned in the SION of the export product. It may be pertinent to repeat that in the SION for finished leather from Hide of Cowl Buffalo (entry No.G-7) and finished leather from skin of goat/ sheep/ calf (entry No.G-46) areca nut is not specifically mentioned. It is also pertinent to add that the Public Notice dated 15.05.2012 is not a clarificatory circular; it is a Public Notice having the force of law and was issued in exercise of the powers conferred under para 2.4 of the Foreign Trade Policy, 2009-2014 and Paragraph 1.1 of Handbook of Procedures (Vol.1) and in terms of which the D.G.F.T. notified the amendment in the Handbook of Procedures, Vol.2, 2009-14 by way of addition of General Note No.9 to the General Notes for Leather and Leather Products (Product: G) of the Standard Input Output Norms book. (SION) after General Note No.8. Thus, the said Public Notice is not to be confused to be some sort of clarificatory circular. The judgment of the Supreme Court in the case of Good Year India Limited (supra) to the effect that the items following the words such as are only illustrative and not exhaustive is not of any relevance in the case in hand inasmuch as even if the items listed following the words "such as" in the said entries G-7 and G-46 are taken to be merely illustrative, the fact remains that areca nuts/ betel nuts are not specifically mentioned in these entries and in terms of Public Notice dated 15.05.2012 Areca nuts / betel nuts, are allowed to be imported under such DFIA's by non actual users like the appellant only if areca nuts I betel nuts were mentioned specifically in the related SION. The CESTAT judgment in the case of Global Exim (supra) cited by the appellant is not in relation to Areca nuts nor is

that an interpretation of Public Notice dated 15.05.2012. Also Public Notice No.35(RE-2013)/2009-2014 dated 30.10.2013 is not being applied

retrospectively in the present case. In the said judgment in para 7 the following is stated:

7. It is settled law as held by the Hon'ble Bombay High Court in the matter of Narendra Udeshi - 2003 (156) ELT 819 (Bom.) that by way

of Circulars and Public Notice, restrictions and prohibitions in imports under licence cannot be imposed. The said judgment was upheld by

the Hon'ble Supreme Court in UOI v. Narendra Udeshi - 2003 (158) ELT A275 (SC). Further, in Sandur Micro Circuits Ltd. 2008 (229) ELT

641 (SC) it was held that-

“5. The issue relating to effectiveness of a Circular contrary to a Notification statutorily issued has been examined by this Court in

several cases. A Circular cannot take away the effect of Notifications statutorily issued. In fact in certain cases it has been held that the

Circular cannot whittle down the Exemption Notification and restrict the scope of the Exemption Notification or hit it down. In other words it

was held that by issuing a circular a new condition thereby restricting the scope of the exemption or restricting or whittling it down cannot

be imposed...”

In this regard, it is pertinent to mention that in the case of Sandur Micro Circuits, referred to in the above quoted para, it was held that a circular

cannot take away the effect of notification statutorily issued. That position is incontrovertible. However, in the present case it is not any circular

which is being interpreted but a Public Notice issued in exercise of power conferred under paragraph 2.4 of the Foreign Trade Policy and para 1.1 of

the Handbook of Procedures in terms of which an amendment to the Handbook of Procedures has been notified. Thus, the said Public Notice has

been issued statutorily; it is not some sort of clarificatory circular. Thus, the judgment of CESTAT in the case of Global Exim (supra) does not come

to the rescue of the appellant. As regards the judgment of Gujarat High Court order dated 02.05.2013 in Special Civil Application No.204 of 2011 in

the case of Babu Ram Hari Chand vs. Union of India & Ors. it is pertinent to note that in that case the imports took place prior to the issuance of

Public Notice dated 15.05.2012 and therefore the said judgment is also of no

avail for the purpose of the present case.

6. In the light of the aforesaid analyses, we are of the view that the impugned order does not suffer from any infirmity. The appeal is dismissed.