

(2021) 11 CESTAT CK 0083

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 86266 Of 2013

Power Weave Software Services P. Ltd.

APPELLANT

Vs

Commissioner Of Central Excise, Mumbai-I

RESPONDENT

Date of Decision : 30-11-2021

Acts Referred:

Citation : (2021) 11 CESTAT CK 0083

Hon'ble Judges : Ashok Jindal, J;C.J. Mathew, Technical Member

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The appellant is in appeal against the impugned order wherein duty has been demanded from the appellant for import of the goods being 100%

EOU, who obtained permission from Software Technology Parks of India (STPI in short) and goods were also liable for confiscation and penalty was

also imposed.

2. The facts of the case are that the appellant is a 100% EOU approved by Software Technology Park of India (STPI). The appellant obtained

permission from STPI to install their unit at 104, Dhantak Plaza, Makwana Road, marol, Andheri (E), Mumbai. As the appellant found that the

premise is not sufficient, therefore, they sought to shift to another premises at The Great Oasis, 2nd Floor, D-13, Road No. 21, Andheri (E),

Mumbai. The appellant sought permission from STPI and STPI had issued the LOP on 04.01.2011. As the appellant move an application for

change of address on 17.3.2011 and the same has been obtained in Sept, 2011, the Department was not knowing whether the imported goods in

question have been in the possession of the appellant or not. Therefore, the

proceedings were initiated against the appellant demanding duty on duty free imported goods as the same were diverted from the premises originally where the goods were imported. The show-cause notice was culminated into confirmation of duty and imposition of penalty as the goods in question have been diverted without payment of duty. Thereafter, in September, 2011 the appellant moved an application before the concerned Central Excise officer for granting registration at their new premises. As the same was pending, the impugned order was passed for demand of duty along with interest and penalties were also imposed and Bank Guarantee was also encashed for alleged diversion of goods, which has been imported duty free. Against the said order, the appellant is before us.

3. Learned Counsel for the appellant submits that they have obtained necessary permission from STPI and there was only a procedural lapse that they have shifted to a new premise without intimating to the Department as the existing premise was found short for their working and they also obtained permission in this regard from STPI. In these circumstances, it cannot be said that the appellant has diverted the imported goods. Further, he relied on the decision in the case of Comat Technologies Pvt. Ltd. â?" 2009 (247) ELT 514 (Tri), which has been upheld by the Hon'ble Karnataka High Court reported in 2012 (280) ELT 511 (Kar). Therefore, he prayed that the impugned proceedings are to be set aside.

4. On the other hand, learned AR for the Revenue submitted that Revenue was not having any knowledge whether the imported goods were diverted for long time. As the imported goods were diverted without intimating the Department, therefore, the duty has been rightly demanded and penalty was rightly imposed.

5. Heard the parties and considered the submissions.

6. The facts of the are not in dispute as the appellant has admitted that they have shifted to a new premises and permission in this regard was obtained from STPI for shifting to a bigger premises. The said issue has been settled by the Tribunal in the Comat Technologies Pvt. Ltd. (supra) which has been upheld by the Hon'ble Karnataka High Court, wherein this Tribunal has observed as under: -

6. I have gone through the records of the case carefully. According to the Revenue, the Commissioner (Appeals) had granted undue benefit

to the unit by travelling beyond the statutory provisions of the Act under provisions contained in the Notification. In the present case, in

terms of the Section 111(j) and 111(o), the goods are liable for confiscation as they had been cleared in violation of conditions of the

notification. The Commissioner (Appeals)'s stand that the goods in any case are accounted is to defeat the very provisions of

Notification/Act which cannot be an intention of legislation. It is seen that the Departmental authority themselves had subsequently given

warehousing licence to the premises to which the goods have been shifted in Rajajinagar. There is also no allegation that the goods were

not to be used for export. In fact there is only a technical violation in not bonding the premises from the Customs authority. These factors

were taken into account by the Commissioner (Appeals) in setting aside the demand of duty. Moreover, the Commissioner is correct in

stating that the demand of duty on the goods is premature as the goods are still in the bonded warehouse. Only due to certain business

exigencies, there was a lapse of not bonding the premises before the goods were shifted. For these violations, the Commissioner (Appeals)

had rightly upheld the imposition of penalty/fine. In my view, the Commissioner (Appeals)'s order appears to be legal and proper.

Hence the same is upheld. The Revenue appeal is rejected.

7. In view of this, we hold that the appellant cannot be made liable to demanding duty on the imported goods which have been procured duty free

under LOP issued by STPI. Therefore, we set aside the impugned order and allow the appeal with consequential relief, if any, as per law.

(Dictated and pronounced in open court)