(2016) 04 DEL CK 0001

In the Delhi High Court

Case No : Writ Petition (C) No. 3614 of 2015 & C.M. Appl. No. 6450 of 2015

Smiiel APPELLANT

Vs

Deputy Commissioner of Customs RESPONDENT

Date of Decision : 08-04-2016

Acts Referred:

Citation : (2017) 347 ELT 20

Hon'ble Judges : S. Muralidhar and Vibhu Bakhru, JJ.

Bench : Division Bench

Advocate : Shri M.P. Devnath, Advocate, for the Petitioner; Shri Satish Kumar, SSC, for the Respondent

Final Decision : Disposed Off

Judgement

1. This petition challenges the order-in-original dated 14th March, 2014 passed by the Deputy Commissioner of Customs, ICD, Tughlakabad, confirming the duty demand of Rs. 5,60,00,000/- and further imposed a penalty of Rs. 25 lakhs.

2. The facts leading to the present petition are that the petitioner obtained an advance authorisation dated 25th April, 2008 from the Joint Director General of Foreign Trade, New Delhi (''Joint DGFT'') permitting to export three products named as Injected Moulded Plastic parts/components for wiring harness-articles made of Polyamide 66/Nylon 66 with or without seal rings, Injected Moulded Plastic parts/components for wiring harness-articles made of PBT (Polybutylene Terephthalate) with or without seal rings, and Injected Moulded Plastic parts/ components for wiring harness-articles made of PBT (Polybutylene Terephthalate) & Polyamide 66/Nylon 66 with seal rings.

3. It is stated that with respect to the export of the above three products, the following inputs were allowed to be imported namely, Polyamide 66/Pylon 66 TC Leona/Zytel 103 FHS, Seal rings/Rubber rings/Rings TC made of NBR and silicon rubber and Polybutylene Terephthalate (PBT) TC PBT Resins grade 201 AC in different colours and shades, Duranex plastic coloured compound.

4. In addition, there were two other advance authorisation obtained by the petitioner from the office of the Joint DGFT on 31st August, 2007 and 2nd January, 2009. It is stated that the petitioner moved an application on 20th July, 2011 to the office of DGFT for clubbing and redemption of the above advance authorisations. It is stated that reminders in this regard were issued on 13th January, 2012, 5th September, 2012, 11th March, 2013 and 19th October, 2013.

5. It is stated that a show cause notice was issued on 10th April, 2013 in regard to the advance authorisation No. 0510219762/2/03/00, dated 25th April, 2008. The petitioner appeared for a personal hearing before the learned Deputy Commissioner of Customs on 13th December, 2013. It is explained that there was a delay in obtaining Export Obligation Discharge Certificate (''EODC'') for reasons not attributable to the petitioners but due to the delay in the office of the DGFT in issuing such certificate. It is stated that ultimately EODC was issued to the petitioner from the office of the Additional DGFT on 30th January, 2015.

6. In the meanwhile, the impugned order had been passed on 14th March, 2014 but was not served on the petitioner. This impugned order is numbered as AO No. 139/2014/EPM/DC/ICD/TKD, and is in relation to the advance licence No. 0510219762/2/03/00, dated 25th April, 2008. The reason for confirming the aforementioned duty demand of Rs. 5.6 crores and penalty of Rs. 25 lakhs was that the petitioner had not submitted EODC for fulfilment of export obligation.

7. The case of the petitioner is that the aforementioned impugned order was not served upon it, and the petitioner was not aware of it till 24th February, 2015 when a representative of the petitioner was in the office of the Deputy Commissioner for some other matter. It was in the above circumstances, the present petition was filed.

8. In the similar circumstances, where the EODC was obtained subsequent to passing of the impugned order by the Customs Department, but, for the reasons not attributable to the petitioner, this Court has set aside such demand and penalty and remanded the matter to the adjudicating authority for a fresh determination after taking into consideration the EODC obtained. A sampling of the orders is as under :

(i) Order dated 25th August, 2015 in W.P. (C) No. 7896 of 2015 (Jonson Rubber Industries Ltd. v. UOI)

(ii) Order dated 12th January, 2016 in W.P. (C) No. 10031 of 2015 = 2016 (334) E.L.T. 410 (Del.) (Lifelong India Pvt. Ltd. v. UOI)

(iii) Order dated 15th January, 2016 in W.P. (C) No. 11852 of 2015 (Lloyd Electric & Engineering Ltd. v. UOI)

(iv) Order dated 29th January, 2016 in W.P. (C) No. 741 of 2016 (Keli Industries Ltd. v. UOI)

9. Accordingly, this Court sets aside the impugned Order-in-Original dated 14th

March, 2014 in A.O. No. 139/2014/EPM/DC/ICD/TKD passed by the Deputy Commissioner of Customs, ICD, Tughlakabad and remands the matter concerning licence No. 0510219762/2/03/00, dated 25th April, 2008 to the Deputy Commissioner of Customs for a fresh decision after taking into consideration the EODC obtained by the petitioner from the office of the Additional DGFT in relation to the said advance licence on 20th January, 2015.

10. The writ petition and pending application is disposed of in the above terms but in the circumstances with no orders as to costs.