Customs, Excise & Service Tax Appellate Tribunal,
West Zonal Bench : Ahmedabad

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 12844 of 2018

[Arising out of Order-in-Appeal No OIA-KDL-CUSTM-000-APP-019-020-18-19 dated 13.08.2018 passed by Commissioner (Appeals), Customs, Kandla]

PCL Oil & Solvent Limited **.... Appellant**
703, 7th Floor, DLF Tower-B, District Centre,
Jasola, NEW DELHI.

VERSUS

Commissioner of Customs, Kandla **.... Respondent**
Custom House,
Near Balaji Temple, Kandala, Gujarat

APPEARANCE :

Shri T. Vishvanath and Shri Manish Jain, Advocates for the Appellant
Shri S.K. Shukla, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

FINAL ORDER NO. A/12493 / 2019

DATE OF HEARING : 04.12.2019
DATE OF DECISION: 20.12.2019

RAJU :

This appeal has been filed by M/s. PCL Oil & Solvent Limited against the order of Commissioner (Appeals). The Commissioner (Appeals) had set aside the order of additional Commissioner dropping of demand of Customs duty.

2. Learned Counsel for the appellant pointed out that they are manufacturing goods availing benefit of imports duty free advance authorization. He pointed out that as per duty free advance authorization the appellant are allowed to import certain quantity of goods subject to value limits, for export of finished goods. The quantity of goods importable by them is determined by Standard Input Output Norms (SION) norms. As a result, while they were permitted to import certain quantity against advance authorization duty free, they actually needed the lesser quantity to

manufacture the goods required to be exported. Learned Counsel pointed out that Revenue is seeking to demand duty on account of their efficient manufacturing process. Learned Counsel pointed out that the Revenue has primarily relied on Para 4.28 (f) (v) of Handbook of Procedure, 2004-09. The said paragraph reads as under:-

> *"4.28(f) RA shall compare relevant portion of Appendix 23 duly verified and certified by Chartered Accountant with that of norms allowed in Authorisation(s) and actual quantity imported against Authorisation(s) in the beginning of licensing year for all such Authorisations redeemed in preceding licensing year.* ***In this verification process, in case it if found that Authorisation holder has consumed lesser quantity of inputs than imported, authorisation holder shall be liable to pay customs duty on unutilized value of imported material*** *alongwith interest thereon as notified, or effect additional export within the EO period. However, for the customs duty component, the authorization holder has the option to furnish valid duty credit scrips issued under Chapter 3 of FTP and DEPB."*

In terms of aforesaid paragraph, Revenue is seeking demand duty on the quantity of material imported by them and not used by them in manufacturing goods for entire export obligation in terms of advance authorization. Learned Counsel argued that the said paragraph applied only to "unutilized value of imported material". He argued that there was no unutilized material left as they had utilized the entire material for manufacture of finished goods and cleared the said finished goods in the domestic market. He argued that policy permits the clearances of finished goods manufactured out of such imported raw materials to domestic market, in terms of Para 4.1.5 of Foreign Trade Policy (FTP). He submits that in case there is any inconsistency between the provisions of FTP and HBP, then FTP provisions will prevail over HBP. He relied on the following decision to assert that Handbook of Procedure and Foreign Trade Policy should be read harmoniously:-

(a) Sri Venkataraman Devaru & Ors vs. State of Mysore & Ors – AIR 1958 SC 255

(b) Krishan Kumar vs. State of Rajasthan & Ors – AIR 1992 SC 1789

(c) Sultana Begum vs. Prem Chand Jain – AIR 1997 SC 1006

(d) Sarla Performance Fibers Limited vs. Commissioner of Central Excise – 2010 (253) ELT 203 (Tri. Ahmd.)

(e) BRG Iron and Steel Company Pvt. Limited vs. UOI – 2014 (309) ELT 393 (Delhi)

(f) Narendra Udeshi vs. UOI – 2003 (156) ELT 819 (Bombay)

3. Learned Counsel further argued that no condition of Notification Nos. 93/2004-Cus and 96/2009-Cus has been violated and therefore, no demand of customs duty can be imposed. Learned Counsel also argued that there was no misdeclaration, therefore, extended period of limitation cannot be invoked. He relied on the decision of Hon'ble Gujarat High Court in Tax Appeal No. 271 of 2009. He argued that in such cases, even if there is any misdeclaration before DGFT, the customs cannot invoke extended period of limitation on that ground as there is no misdeclaration before the customs authorities.

4. Learned Authorised Representative relies on the impugned order. He argued that the imports were made after exports and therefore, appellant was aware of the actual consumption of the raw material. He relied on the decision in the case *KDL Biotech Limited vs. CC (Export Promotion), Mumbai – 2015 (327) ELT 305 (Tri. Mumbai)* to argue that in identical circumstances, the demand was upheld.

5. We have gone through the rival submissions. We find that the entire case of Revenue is based on Para 4.28 (f) of Handbook of Procedure, 2004-09. It is seen that Para 4.28(v) reads as under:-

> **4.28 Regularisation of Bonafide Default.**
>
> Cases of bonafide default in fulfillment of EO may be regularised by RA as under:
>
> (i) to (iv) ....
>
> (v) RA shall compare relevant portion of Appendix-23 duly verified and certified by Chartered Accountant with that of norms allowed in Authorisation(s) and actual quantity imported against Authorisation(s) in the beginning of licensing year for all such Authorisations redeemed in preceding licensing year. In this verification process, in case it is found that Authorisation holder has consumed lesser quantity of inputs than imported, Authorisation holder shall be liable to pay customs duty on unutilized value of imported material, along with interest thereon as notified, or effect additional export within the EO period. However, for the customs duty component, the authorisation holder has the option to furnish valid duty credit scrips issued under Chapter 3 of FTP and DEPB.

It can be seen that Para 4.28 relates to regularization of bonafide default by exporters. The said provision is applicable only in cases of regularization of default and it cannot be applied straightaway to normal imports where export obligations have been fulfilled like in the instant case. Thus, it cannot be said that the provisions of Para 4.28 of HBP are applicable to all advance authorization. It is seen that the entire foundation of the Revenue's case is based on Para 4.28(v) of HBP 2004-09 and Revenue is seeking apply the said provisions to the case where there is no default. Therefore, we do not find any force in this argument of the Revenue.

6. Moreover, we find that the policy prescribed in Para 4.1.5, it is seen that it permits use of left-over material for manufacture goods and clear the same in domestic tariff area. Para 4.1.5 of FTP 2004-09 reads as under:-

> "4.1.5. Advance Authorisation and / or materials imported thereunder will be with actual user condition. It will not be transferable even after completion of export obligation. However, Authorisation holder will have option to dispose off product manufactured out of duty free inputs once export obligation is completed. "

7. We also find that Revenue has not pointed out provision of the notification that has been violated by the appellant. The Revenue has relied on the decision in the case of *KDL Biotech Limited (supra)* wherein in Para 27, the following has been held:-

> **"27.** We have considered the submissions. There is no dispute that the raw material imported was far in excess of that required by the appellant. This fact *was not brought to the notice of the licensing authorities* so that they could have issued the licence as per the actual requirement. Even after duty free importation, the appellants have neither made additional exports, nor paid the Customs Duty. These details were suppressed and came to light during investigation. Accordingly, we hold that there is a violation of the provisions of Handbook read with Foreign Trade Policy and since the exemption is granted to raw materials imported against Advance Authorisation issued in terms of Foreign Trade Policy, the exemption is subject to limitation as provided in the Notification, Foreign Trade Policy/Handbook of Procedures. We are not impressed with the argument of the learned counsel for the appellants that the said provision tries to restrict the provisions of the Foreign Trade Policy. In our view, it *only clarifies* the position relating to SION. It is not practically possible to precisely point out the exact input-output required which would be applicable for all manufacturers. Moreover such norms are based upon the feed back from the Trade Association which would normally be in the worst scenario. Foreign Trade Policy does not state that licence holder can use the surplus raw material imported duty free for own use. On the contrary, Handbook clarifies that duty is to be paid or additional export obligation to be fulfilled. We also note that advance authorization are issued based upon *ad hoc* Norms or self declared norms in terms of *Handbook* only. When Handbook authorizes use of *ad hoc* norms or self declared norms, we do not see any rationale in questioning that Handbook is trying to restrict the Policy. Example of All Industry Drawback Rate is not at all comparable to the SION. There is no correlation under the All Industry Drawback Rate with the actual consumption of material or the duty incident thereon. Rates are based on All India estimates (and not based upon actual export orders and manufacturing process). Advance Licence Scheme is altogether a different scheme. Here the basic idea is of *permitting import of duty free raw materials actually required for the production of an export order and use the same for the said purpose."*

It is seen that, in the said case also the Tribunal confirm Para 4.28(f) of HBP. It is seen that while doing so, Revenue has failed to notice Para 4.28 of HBP relates only to cases of bonafide default in fulfilling export obligation and it would naturally not apply to the cases where there is no default like in the instant case.

8. In view of above, we find merit in the appeal and the same is allowed.

(Pronounced in the open court 20.12.2019*)*

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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