

In the High Court of Judicature at Madras

Dated : 07.8.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice T.MATHIVANAN

Civil Miscellaneous Appeal Nos.1523 and 1524 of 2015
and M.P.Nos.1, 1 & 2 of 2015

M/s.JKM Daerim Automotive Ltd.
(now merged with Dynamics
Technologies Limited), Bangaluru.

...Appellant in
both CMAs

Vs

1.The Commissioner of Customs (Appeals),
Custom House, Chennai-1.

2.The Assistant Commissioner of Customs,
(Group-7 DEEC), Custom House,
Chennai-1.

3.The Commissioner of Customs (Exports),
Custom House, Chennai-1.

4.The Customs, Excise and Service Tax
Appellate Tribunal, South Zonal Bench,
Shastri Bhavan, Haddows Road,
Chennai-6.

...Respondents in
both appeals

APPEALS under Section 130 of the Customs Act, 1962 against the
common final order dated 30.4.2015 made in Misc.Order No.40665-40666/
2015 on the file of the Customs, Excise and Service Tax Appellate Tribunal,
Chennai-6.

For Appellant : Mr.K.S.Govinda Prasad
For Respondents 1 to 3 : Mr.Santhana Raman

COMMON JUDGMENT
(Judgment was delivered by V.RAMASUBRAMANIAN,J)

These appeals are filed under Section 130 of the Customs Act, 1962 against the order of the Customs, Excise and Service Tax Appellate Tribunal (i) dismissing an application for restoration of an appeal that was dismissed for non prosecution and also for non compliance with a conditional order and (ii) dismissing another application for amendment of cause title.

2. Heard Mr.K.S.Govinda Prasad, learned counsel for the appellant and Mr.Santhana Raman, learned Senior Panel Counsel for the respondents.

3. The appellant imported goods that were purportedly duty free on the basis of an advance licence dated 28.1.2005 issued to them pursuant to Customs Notification No.93/2004. But, the advance licence was coupled with an obligation to export finished goods.

4. On the ground that the appellant failed to produce export obligation discharge certificate, the Adjudicating Authority issued a demand notice on 7.8.2008. It was confirmed by an Order in Original.

5. As against the Order in Original, the appellant filed an appeal and the appeal was dismissed. Therefore, the appellant moved the Customs, Excise and Service Tax Appellate Tribunal along with applications for stay and for waiver of pre-deposit condition. By an order dated 8.6.2012, the Tribunal granted stay as well as waiver subject to the condition that the appellant should deposit 50% of the duty demanded within four weeks and to report compliance by 30.7.2012.

6. It appears that instead of making a deposit, the appellant debited an amount of Rs.6,42,717/-, representing 50% of the duty amount in their RG23A CENVAT book vide entry No.3645 dated 13.7.2012. Unfortunately, the appellant did not even bring this to the notice of the Tribunal nor the representative of the appellant appeared before the Tribunal, when the appeal was called on 30.7.2012. Consequently, the appeal was dismissed by the Tribunal by an order dated 30.7.2012.

7. Compounding matters further, the appellant filed an application for restoration on the ground that they had complied with the conditional order, but again failed to appear before the Tribunal. Therefore, the Tribunal dismissed the restoration application on 9.7.2013.

8. Thereafter, the appellant made a cash deposit again on 28.2.2014 and filed two more applications, one for restoration and another for amendment of the cause title on the ground that even before the Order in Original was passed, the appellant was amalgamated with another company. Finding such a juggernaut incapable of being untied, the Tribunal dismissed the applications for restoration and for amendment of cause title. Therefore, the appellant has come up with the above appeals.

9. In so far as the allegation of non compliance with the conditional order is concerned, the appellant appears to have complied with the conditional order twice over, but in a wrong account and after the time granted by the Tribunal. The appellant complied with the conditional order first on 24.7.2012 by making a debit entry in the CENVAT book. This compliance was, irrespective of whether it was proper compliance or not, made within the time stipulated by the Tribunal. The second compliance was on 28.2.2014 by way of cash, which was certainly beyond the period of time. Therefore, the appellant has complicated the matters for themselves, but demonstrated their bona fides by first making a debit entry in the CENVAT book and next making a cash deposit. In essence, the appellant has suffered to the extent of 100% of the duty levied.

10. In such circumstances, the appeals deserve to be allowed. The appellant was also merged with another company by an order of the Karnataka High Court passed under Sections 391 to 394 of the Companies Act, 1956 way back on 4.1.2008. Therefore, even if the Department proceeds against the appellant any further, the amalgamation has to be given effect to. In such circumstances, it will be in the interests of the Department itself to have the amendment of the cause title allowed.

11. Therefore, both the civil miscellaneous appeals are allowed. The orders of the Tribunal are set aside. The appellant shall be taken to have complied with the conditional order. The amendment is allowed and the Tribunal is directed to take up the appeal and dispose it of on merits within a period of six months. No costs. Consequently, the above MPs are closed.

07.8.2015

Internet : Yes

To

- 1.The Commissioner of Customs (Appeals), Custom House, Chennai-1.
- 2.The Assistant Commissioner of Customs, (Group-7 DEEC), Custom House, Chennai-1.
- 3.The Commissioner of Customs (Exports), Custom House, Chennai-1.
- 4.The Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Shastri Bhavan, Haddows Road, Chennai-6.

RS

V.RAMASUBRAMANIAN,J
AND
T.MATHIVANAN,J

RS

CMA(NPD)Nos.1523 & 1524/2015
and MP.Nos.1, 1 and 2 of 2015

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