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HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 12-03-2018

Judgment delivered on 09-08-2018

TAXC No. 174 of 2017

1. M/s Uniworth Ltd. [Open End Division] Plot No.932-945, Urla Industrial Area, Raipur, Chhattisgarh

2. Shri S.N. Maheshwari A-701, Shakun Elegance, M B S Marg, Opposite Truck Union, Kota, Rajasthan 324005

3. Shri A.P. Khetan, Deputy General Manager, M/s Uniworth Ltd., [Open End Division], Plot No.923-945, Urla Industrial Area, Raipur, Chhattisgarh

---- Appellants

Versus

1. Commissioner Of Customs & Central Excise Central Excise Building, Dhamtari Road, Raipur, Chhattisgarh.

---- Respondent

For Appellants	Shri Rupesh Kumar, Shri S.S. Rajput & Shri Pravesh Bahuguna, Advocates
For Respondent	Shri Manish Sharma, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Shri Justice Ram Prasanna Sharma

C A V Judgment

The following judgment of the Court was delivered by **Prashant Kumar Mishra, J.**

1. This appeal under Section 130 of the Customs Act, 1962 (for brevity 'the Act, 1962') was heard on the following substantial question of law :

> "Whether the amended notification bearing No.65/99-Cus dated 19.5.99, particularly the requirement therein that the

> imported capital goods shall be used within a period of one year from the date of importation or procurement, would apply to the case in hand as the appellant had imported the goods in November, 1997 i.e. prior to the date of issuance of the subject notification ?”

2. The facts necessary giving rise to this appeal for answering the substantial question of law are that the appellant was granted the letter of permission as 100% Export Oriented Unit (for brevity ‘EOU’) for manufacture and export of wool yarn. The appellant has two divisions of the said 100% EOU, one at Butibori, Nagpur (Maharashtra) and another at Raipur (Chhattisgarh). Appellant imported second hand machinery and claimed exemption from Excise Duty under Customs Notification No.53/97 dated 3-6-1997 for installation and use at Nagpur unit. The goods were cleared by filing two Bills of Entry and warehoused at Nagpur unit on 27-11-1997. Under permission from the Assistant Commissioner, Nagpur, the appellant transferred the said machinery to its Raipur unit, the shifting and rewarehousing at Raipur unit was done in April, 2000.

3. On receiving intelligence input to the effect that the appellants were misusing the benefits of exemption granted to EOU, the officers of the Directorate General of Central Excise Intelligence (DGCEI) visited appellants Raipur unit and during verification noticed that the machinery remained uninstalled even in the month of March, 2005. The Department issued the show cause notice demanding the customs duty attributable to machinery which were found uninstalled and unusable.

4. The first Order-in-Original was passed by the Commissioner on 9-2-2007 confirming the demand together with various penalties under the Act, 1962. This order was assailed before the Tribunal, which was allowed vide Tribunal's order dated 19-5-2011, remitting the matter to the Commissioner for *de novo* decision.

5. On remission, the Commissioner passed the second Order-in-Original on 25-11-2013 with the following operative directions :

   (a) Affirming duty demand of Rs.1,88,26,572/-

   (b) Penalty of Rs.15.00 lacs imposed on the appellant.

   (c) Imposition of penalty of Rs.5.00 lacs each on S.N. Maheshwari & A.P. Khetan.

6. The said Order-in-Original was assailed before the Tribunal, which has now passed the present impugned order dismissing the appellants appeal and affirming the order passed by the Commissioner on 25-11-2013.

7. It is argued that the impugned order is based on application of notification No.53/97 dated 3-6-1997 which states that the imported goods shall be installed in bonded area within a period of one year from its importation, however, the said restriction of one year was inserted only on 19-5-1999 by way of notification No.65/99 amending the notification No.53/97 which is wholly improper. It is further putforth that the amended notification No.65/99 dated 19-5-1999 does not have retrospective effect.

8. In the notification No.53/97 dated 3-6-1997 condition No.6 provides that :

> "The importer executes a bond in such form and for such sum and with such security or surety as may be prescribed by the Assistant Commissioner of Customs, binding himself to fulfil the export obligations and conditions stipulated in this notification and in or under said Export and Import Policy and to pay on demand an amount equal to the duty leviable on the goods as are not proved to the satisfaction of the Assistant Commissioner of Customs to have been used in the manufacture of articles or in connection with the production or packaging or job work for export of goods or services out of India."

9. The above notification No.53/97 dated 3-6-1997 was amended, amongst various other amendments, by subsequent notification No.65/99 dated 19-5-1999 in the following manner :

> "In the case of capital goods, such goods are not proved to the satisfaction of the Assistant Commissioner of Customs to have been found installed or otherwise used within the bonded premises or re-exported within a period of one year from the date of importation or procurement thereof or within such extended period not exceeding five years as the Assistant Commissioner of Customs may, on being satisfied that there is sufficient cause for not using them as above within the said period, allow;"

10. A careful reading of both the notifications, as extracted above, would manifest that after the amendment in May, 1999 exemption was permissible when the capital goods are installed or otherwise used

within the bonded premises or re-exported within a period of one year from the date of importation or procurement thereof, the period of one year being extendable for a maximum period of five years. The appellant imported the goods in 1997 and kept at its Nagpur unit, but later on procured the goods without payment of duty for use in their Raipur unit. The appellant, in fact, applied for rewarehousing and having so procured the goods it were rewarehoused in the Raipur unit on 17-4-2000. This rewarehousing on 17-4-2000 is, thus, after the amendment to notification No.53/97 by subsequent notification No.65/99 dated 19-5-1999, therefore, it is not a case that the Revenue has retrospectively effecting the amended notification. Date of initial procurement has no application because the appellant rewarehoused the goods in its Raipur unit on 17-4-2000.

11. It is also to be noticed that the goods were found uninstalled and not used even in 2005 at the time of verification i.e. even after a period of five years.

12. On a close scrutiny of the amended notification it is clearly discernible that the amended notification provides for procurement of goods either from a public warehouse or a private warehouse, in addition to import. The condition of installation of capital goods within one year was, thus, made applicable both for goods which are imported duty free as well as procured duty free, the appellant having procured the capital goods from its bonded warehouse at Nagpur, it falls under the second category and having thereafter failed to complete installation of goods so procured within one year or even within extended period of five years it is liable to pay

custom duty because the rewarehousing was done after 19-5-1999.

13. In any case, even in the pre-amended notification the appellant was under obligation to satisfy that once having claimed exemption, the capital goods have been used in the manufacture of articles or in connection with the production or packaging or job work for export of goods or services out of India. This condition or obligation having not been fulfilled by the appellant even in March, 2005, even if for the sake of argument, the amended notification is not applied, the appellant was still liable to satisfy the demand.

14. For the foregoing, the substantial question of law is answered against the appellant that in the amended notification dated 19-5-1999 the date of procurement goods would be the relevant date for application of the notification.

15. As an upshot, the appeal, being bereft of merit, is liable to be and is hereby dismissed.

Sd/- Sd/-

Judge Judge
Prashant Kumar Mishra Ram Prasanna Sharma

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