

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**TAXC No. 18 of 2009**

- Union Of India Through Commissioner Central Excise And Customs Central Excise Bhawan, Dhamtari Road, Tikrapara, Raipur

---- Appellant

Versus

- M/s Beekay Hygiene Products, (Unit of BSBK PVT. LTD.), BSBK House, Nandini Road, Bhilai (C.G.).

---- Respondent

For Appellant
For Respondent

Shri Vinay Pandey, Advocate.
Shri Manoj Paranjpe, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice Ram Prasanna Sharma****Order On Board****by Hon'ble Prashant Kumar Mishra J.****20/03/2018**

1. This is an appeal by the Revenue assailing the order passed by the Customs, Excise and Service Tax Appellate Tribunal (henceforth, the 'Tribunal') allowing the appeal preferred by the respondent Company to set aside the duty demand of Rs. 95,07,701/-, confiscation of capital goods and penalty of Rs. 25 Lacs.
2. The respondent is a hundred percent Export Oriented Unit, (EOU) having been issued an Industrial license of the said

category on 19.04.1990 for manufacture and export of Latex Hand Gloves with annual capacity of 30 million pieces and annual export target value of Rs. 168 Lacs.

3. Admittedly, the respondent company imported capital goods valued at Rs. 52,80,833/- with duty free and imported inputs and also procured inputs from domestic tariff area duty free valued at Rs. 2.03 crore. The duty forgone in favour of respondent Company amounted to Rs. 1,92,77,57/-.
4. The appellant commenced production in March, 1990 and exported the subject goods valued at Rs.4 crores. On alleged unprecedented competition in the International Market, the prices of the goods fell down sharply in the International Market which adversely impacted the respondent company's export obligations. Consequently, the respondent applied and were granted de-bonding by the DGFT authorities on 08.09.1994. They stopped manufacture in 1995 and completed export of the available manufactured stock by March, 1996. On being informed about their de-bonding obligation, the respondent satisfied the said de-bonding duty. The respondent was also alleged to have failed to achieve the required value addition. However, the Development Commissioner got details of the value addition undertaken by the respondent and on due verification by the jurisdictional Superintendent show cause noticed dated

23.08.1999 for having failed to achieve value addition was withdrawn on 31.12.2002, inter-alia holding that the respondent has achieved the value addition.

5. Despite having been allowed de-bonding and the proceedings for not achieving value addition having been dropped, the Assistant Commissioner issued show cause notice on 18.04.1996 seeking to impose duty to the tune of Rs.95,07,701/-, confiscation of capital goods under Section 111 and penalty under Section 112 of the Customs Act, 1962.
6. The Adjudicatory Authority of Commissioner eventually imposed the above said liability. Assailing the order of Commissioner dated 28.10.2005 the respondent preferred an appeal before the Tribunal which has been allowed by the impugned order. The Tribunal set aside the duty demand, confiscation of capital goods and penalty and instead directed the respondent to pay the applicable duty on the capital goods on the written down value amounting to Rs. 22,18,075/- as on 31.03.1996 along with interest. The respondent Company has not assailed this part of the order.
7. The present appeal has been admitted on the following substantial questions of law:

“(1)(A) Whether the order of confiscation of the capital goods and imposition of penalty was fully

justified in the facts and circumstances of the case?

(1) (B) Whether the Tribunal erred in law in setting aside the order of confiscation of the capital goods and imposition of the penalty against the respondent?"

8. Shri Vinay Pandey, learned standing counsel for the Revenue would submit that the respondent having admittedly failed to achieve the export obligation, the duty demand, confiscation of capital goods and penalty should not have been interfered by the Tribunal. Referring to the order passed by this Court on 13.08.2015 in TAXC No.13 of 2015 {**Commissioner, Central Excise Customs & Service Tax vs. M/s Lafarge India Pvt. Ltd.**}, Shri Pandey would argue that the impugned order is unreasoned, therefore, the matter deserves to be remitted back to the Tribunal for decision afresh.
9. Per contra, Shri Manoj Paranjpe, learned counsel for the respondent would submit that the impugned order is a well reasoned order having dealt with all the facts and material issues, no interference in this appeal is called for. He would also submit that no substantial question of law is arising in this appeal. He would refer to the Supreme Court Judgment in the matter of **M/S. Hindustan Steel Ltd. vs. State of Orrisa 1969 (2) SCC 627** to argue that liability to pay penalty does not arise merely upon proof of default. Something more is needed to impose penalty like the

deliberate attempt to evade duty.

10. At the outset, we may observe that this Court has not framed any substantial question of law as to the illegality of the impugned order setting aside penalty imposed on the respondent company. In the absence of any challenge to the said part of the order, we are afraid, an independent challenge only to the order setting aside confiscation of capital goods and imposition of penalty may not be open to challenge.
11. Despite the above, we may notice that the show cause notice issued against the respondent did not refer to any particular nature of default as envisaged in various sub-clause of Section 111 for which the respondent would be held liable for confiscation of capital goods.
12. It is also important to bear that the appellant has not assailed the validity of the order passed by the DGFT allowing the respondent company's application for de-bonding and has accepted the said order by allowing the respondent to pay 10% of CIF value as penalty for de-bonding and opt out of 100% EOU prematurely. Similarly, the Revenue has not assailed the order of Development Commissioner on 31.12.2002 holding that the respondent has achieved the value addition. Allowing a 100% EOU Unit to prematurely opt out of 100% scheme is possible and permissible only when the authorities are satisfied that the EOU Unit is not able to

meet out the conditions of the scheme for circumstances beyond his control.

13. It always remained open for the authority to refuse de-bonding and at the same time initiate action for payment of duty which the respondent was exempted at the time of import of capital goods for the EOU Unit. The resultant effect of allowing de-bonding and holding that value addition has been achieved by the respondent is that there was no willful attempt to evade duty by importing duty free goods for EOU without ever intending to operate and manufacture the goods in the EOU Unit. Once the element of intention to evade duty is absent and as a matter of fact there is no such allegation in the show cause notice, demand of duty, confiscation of capital goods and imposition of penalty ought not to have been fastened on the respondent.

14. Insofar as reliance by the Revenue on the order passed by this Court in the matter of **M/S. Lafarge India Pvt. Ltd.** (supra), suffice it would be to mention that the impugned order runs into 7 pages and has dealt with all the issues germane for decision making by the Tribunal. It is not a laconic order or perfunctory in that sense of the term which has not dealt with the facts and law applicable. We are, therefore, of the considered view that the impugned order is a reasoned order.

15. The above discussion leads us to hold that the order of confiscation of capital goods and imposition of penalty has rightly been set aside by the Tribunal.

16. Both the substantial questions of law are answered against the Revenue and in favour of the respondent company.

17. As a result, the appeal fails and is hereby dismissed.

Sd/-

Judge
(Prashant Kumar Mishra)

Sd/-

Judge
(Ram Prasanna Sharma)

Akhilesh