IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Date of Decision:-24.09.2019

CUSAP No.15 of 2013(O&M)

M/s Ess Kay International.

......Appellant.

Versus

Commissioner of Customs.

......Respondents.

2

CUSAP No.16 of 2013(O&M)

M/s Ess Kay International.

......Appellant.

Versus

Commissioner of Customs.

......Respondents.

3

CUSAP No.17 of 2013(O&M)

M/s Ess Kay International.

......Appellant.

Versus

Commissioner of Customs.

......Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE LALIT BATRA

Present:- Mr. Jagmohan Bansal, Advocate for the Appellant.

Mr. Tajender K. Joshi, Advocate for the Respondents.

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JASWANT SINGH, J.

1. By this common order Customs Appeals No. 15, 16 and 17 of 2013 are disposed of as all the three appeals arise from common order passed by Customs Excise and Service Tax (Appellate) Tribunal, New Delhi (for short 'Tribunal'). The Appellant has filed appeals under Section 130 of the Customs Act, 1962 (for short 1962 Act) seeking quashing of order dated 15.1.2013 (**Annexure P-5**) whereby Tribunal has allowed appeals of the Respondent-department.

2. The Appellant is a manufacturer exporter of textile products. The Appellant during July' 1997 to May' 1998 obtained seven advance licences from the office of Director General of Foreign Trade, Amritsar. The Appellant against said licences imported acrylic fibre and as per terms and conditions of licence, the Appellant was required to export blankets using imported acrylic fibre.

3. All the three appeals are arising from common order dated 15.1.2013 passed by Customs Excise and Service Tax Appellate Tribunal, New Delhi. Facts and issues involved are common, thus facts are borrowed from appeal No. 15 of 2013.

The Appellant in terms of licence No. 002126 dated 17.09.1997 imported acrylic fibre without payment of duty on the condition that imported acrylic fibre would be used to manufacture and export acrylic blanket. The Appellant manufactured blanket and in discharge of his obligation sold a consignment to its supporting manufacturer namely M/s Subal Exports, Amritsar. The supporting manufacturer filed shipping bill no. 603 dated 15.09.1999 at CFS, Amritsar for the export of 1250 printed acrylic blankets. The Respondent-Customs Authorities drew sample and found that contents of acrylic fibre are 37% and other contents are of cotton/wool/polyester staple fibre.

4. On the basis of test reports, the Respondent issued a show cause notice alleging mis-declaration of contents and raising demand of customs duty which was saved at the time of import of raw material i.e. acrylic fibre. The Respondent after granting opportunity of hearing passed an Order-in-Original dated 04.07.2005 by which demand of Customs Duty amounting to Rs.1,57,233/- was confirmed alongwith interest and penalty of ` 75,000/- was imposed. The Appellant carried the matter in appeal and First Appellate Authority i.e. Commissioner (A), Chandigarh vide Order-in-Appeal dated 28.04.2006 relying upon judgment of Tribunal in the case of Appellant itself dropped the demand and reduced penalty from Rs.75,000/- to Rs.10,000/-.

5. The Respondent-Department preferred appeals before Tribunal who vide impugned order dated 15.01.2013 without noticing its earlier order dated 1.4.2005 adjudicating same issue and between the same parties allowed appeal of the Department. Tribunal even did not notice the contention of the Appellant that shipping bill in question has not been used to discharge liability arising from advance licence in question.

6. The Appellant has filed present appeal before this Court raising following questions of law:

(i) Whether the impugned order is perverse and contrary to the facts and record?

(ii) Whether fine imposed upon the Appellant is justified when no appeal with respect to fine was pending before the Learned Tribunal?

(iii) Whether demand of duty and penalty is sustainable when DGFT has already issued redemption certificate?

7. During the pendency of present appeals, Hon'ble Supreme

Court vide order dated 16.07.2015 dismissed appeal of the Revenue which was filed against order dated 01.04.2005 passed by Tribunal in the case of present Appellant.

The Appellant has contended that present appeals deserve to be allowed in view of the fact that appeal of revenue has been dismissed by Hon'ble Supreme Court and it stands concluded that demand of duty is not maintainable as shipping bill in question has not been used to discharge obligation of advance licence and redemption certificate stands issued by DGFT.

8. On 21.08.2019, this Court directed Respondent to file affidavit of Commissioner of Customs, Amritsar indicating factual position regarding fulfilment of export obligation of all the licences.

9. Today in Court, Mr. Tejender k. Joshi, Counsel for the Respondent filed an affidavit dated 24.09.2019 of Commissioner of Customs, Amritsar disclosing that as per report received from DGFT and documents submitted by Appellant, export obligation of all advance licences stand discharged. Appellant has submitted part F in respect of five advance licences and quantity of export details correlates with quantity of material imported.

10. Tribunal in the case of **Ess Kay International Versus Commissioner of Customs, Appeal No. C/764/04-B** vide order dated 01.04.2005 has held that Appellant-Licensee is not liable to pay duty as export obligation arising from advance licence stands discharged. The Tribunal also noticed that Appellant-Licensee has not used disputed shipping bill to discharge export obligation. Hon'ble Supreme Court vide order dated 16.07.2015 has upheld order of Tribunal and dismissed appeal of the Respondent-department.

11. In the present appeals, the Appellant has discharged export obligation without using disputed shipping bills. The Customs duty cannot be demanded on imported raw material as export obligation stands discharged and redemption certificate stands issued by Competent Authority.

Resultantly, present appeals qua demand of customs duty deserve to be allowed and **accordingly allowed**. Counsel for the Appellant does not dispute levy of penalty thus penalty imposed upon Appellant by Adjudicating Authority is upheld.

(JASWANT SINGH)
JUDGE

(LALIT BATRA)
JUDGE

September 24, 2019
Vinay

Whether speaking/reasoned	***Yes/No***
Whether Reportable	***Yes/No***