IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CUSAP No.5 of 2018
Date of decision: 21.02.2019

Crown Milk Specialties Pvt. Limited

……Appellant

Vs.

Commissioner of Customs (Import), New Customs House Indira Gandi Airport, New Delhi

…..Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Deepak Gupta, Advocate for the appellant.
Mr. Tajender Joshi, Advocate for the respondent.

Ajay Kumar Mittal,J.

1. This appeal has been preferred by the appellant-assessee under Section 130 of the Customs Act, 1962 (in short, "the Act") for quashing the order dated 30.3.2017, confirming demand of duty and penalty and order dated 17.10.2017, dismissing the appeal filed by the appellant-assessee, Annexure A.7 and Annexure A.18 respectively. In the alternative, direction has been sought to the respondent to re-examine the matter afresh after taking into consideration the certificate of discharge of export obligation which has already been obtained by the appellant. Following substantial questions of law have been claimed:-

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"a) Whether the respondent has passed impugned order in violation of fundamental right under Article 21 of the Constitution of India?

b) Whether the respondent has passed impugned order in violation of principles of natural justice?

c) Whether impugned order has caused prejudice to the Appellant?

d) Whether impugned orders are sustainable when the Appellant has already obtained certificate of discharge of export obligation?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant-assessee was engaged in the business of export. With a motive to promote export under the Foreign Trade policy, the Government introduced a scheme known as Export Promotion Capital Goods Scheme (EPCG). The assessee under the said scheme got licence to import capital goods at concessional rate of duty under notification dated 17.9.2004 subject to certain conditions. At the time of licence, the assessee also submitted bank guarantee as well as bond with the respondent. The licence was granted to the assessee for a period of eight years. The assessee upto 10.12.2000 i.e. within a period of three years fulfilled 98% export obligation but due to ignorance of law, failed to apply for discharge certificate. As a result, it did not submit discharge certificate with the respondent with a period of 30 days from the date of expiry of licence. Thus, the respondent opined that the assessee violated the conditions of the said licence, Notification, Bond and Bank guarantee. Accordingly, show cause notice dated 25.6.2016, Annexure A.1, was issued to the assessee to show cause as to why the goods imported of the value of ₹2,58,03,470/- under EPCG licence should not be confiscated under Section 111(o) of the Act; duty amounting to ₹66,70,197/- should not be recovered

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under Section 143(3) of the Act alongwith applicable interest thereon, on the amount of duty saved from the date of clearance of imported goods till the date of payment of duty; and penalty under Section 112 of the Act. The respondent fixed the hearing on the show cause notice for 20.01.2017. The assessee vide letter dated 17.1.2017, Annexure A.3, requested the respondent to send the copy of the show cause notice which was supplied to it. The assessee before the respondent submitted that it had already competed the export obligation under the EPCG licence and certificate of discharge of export obligation was pending for certain clarification with the office of the Director General of Foreign Trade and also requested for time to furnish the requisite documents. The respondent after examining the matter vide order dated 30.3.2017, Annexure A.7 confirmed the demand of duty apart from imposing penalty and fine upon the assessee. The assessee vide letter dated 14.6.2017, Anenxure A.8, submitted copy of certificate of discharge of export obligation dated 6.6.2017, Annexure A.9, and requested to drop the order. The respondent vide letter dated 27.6.2017, Annexure A.10, informed the assessee that the adjudicating authority had no power to review or withdraw his own order. Aggrieved thereby, the assessee filed CWP No.14389 of 2017 before this Court which was withdrawn vide order dated 6.7.2017, Annexure A.11, with liberty to take recourse to the available remedies. Thereafter, the assessee filed appeal dated 24.7.2017, Annexure A.12 alongwith application seeking condonation of delay as well as waiver of mandatory pre-deposit before the Tribunal. The registry of the Tribunal vide letter dated 1.8.2017, Annexure A.13, raised certain objections apart from demanding evidence of mandatory pre-deposit. The assessee vide letter dated 17.8.2017, submitted that it had already filed application with the appeal seeking waiver of pre-deposit. The Tribunal directed the assessee to make mandatory pre-deposit and adjourned the matter for 17.10.2017 on

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which date, the assessee submitted an affidavit to the extent that due to financial constraints, it was unable to make mandatory pre-deposit. The Tribunal vide order dated 17.10.2017, Annexure A.18, dismissed the appeal for want of mandatory pre-deposit. Hence the instant appeal by the appellant-assessee.

3. We have heard learned counsel for the parties.

4. Admittedly, the assessee got licence vide notification dated 17.9.2004 under the EPCG scheme to import capital goods at concessional rate of duty subject to certain conditions. The assessee also submitted bank guarantee as well as bond with the respondent. The licence was granted to the assessee for a period of eight years. Within a period of three years, the assessee fulfilled 98% export obligation but failed to apply for discharge certificate. Thus, the respondent opined that the assessee violated the conditions of the said licence, notification, bond and the bank guarantee. Accordingly, show cause notice was issued to the assessee for confiscation of the goods imported, recovery of duty alongwith interest and penalty. The assessee submitted copy of certificate of discharge on 6.6.2017. The respondent informed the assessee that it had no power to review or withdraw its order. Thereafter, the assessee filed appeal alongwith application for condonation of delay as well as waiver of mandatory pre-deposit. The Tribunal directed the assessee to make the pre-deposit. Ultimately, the assessee filed an affidavit before the Tribunal that it was not in a position to make the mandatory pre-deposit due to financial constraints. Thus, the assessee failed to fulfill the required conditions. Consequently, the Tribunal dismissed the appeal for failure to make the pre-deposit by the assessee. In any case, the pre-deposit was 7.5% of the total amount of duty. Learned

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counsel for the assessee has not been able to point out any error or illegality in the order passed by the Tribunal.

5. In view of the above, we do not find any ground to interfere with the order passed by the Tribunal dismissing the appeal filed by the assessee for failure to make the pre-deposit. Thus, no substantial question of law arises. Consequently, finding no merit in the appeal, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

February 21, 2019 **(Manjari Nehru Kaul)**
'gs' **Judge**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No

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